

No. 2730

United States
Circuit Court of Appeals
For the Ninth Circuit.

JACK IRVINE,

Plaintiff and Appellant,

vs.

ANGUS McDOUGALL, J. A. HEALEY, GEORGE
M. SMITH and ROY RUTHERFORD,

Defendants and Appellees.

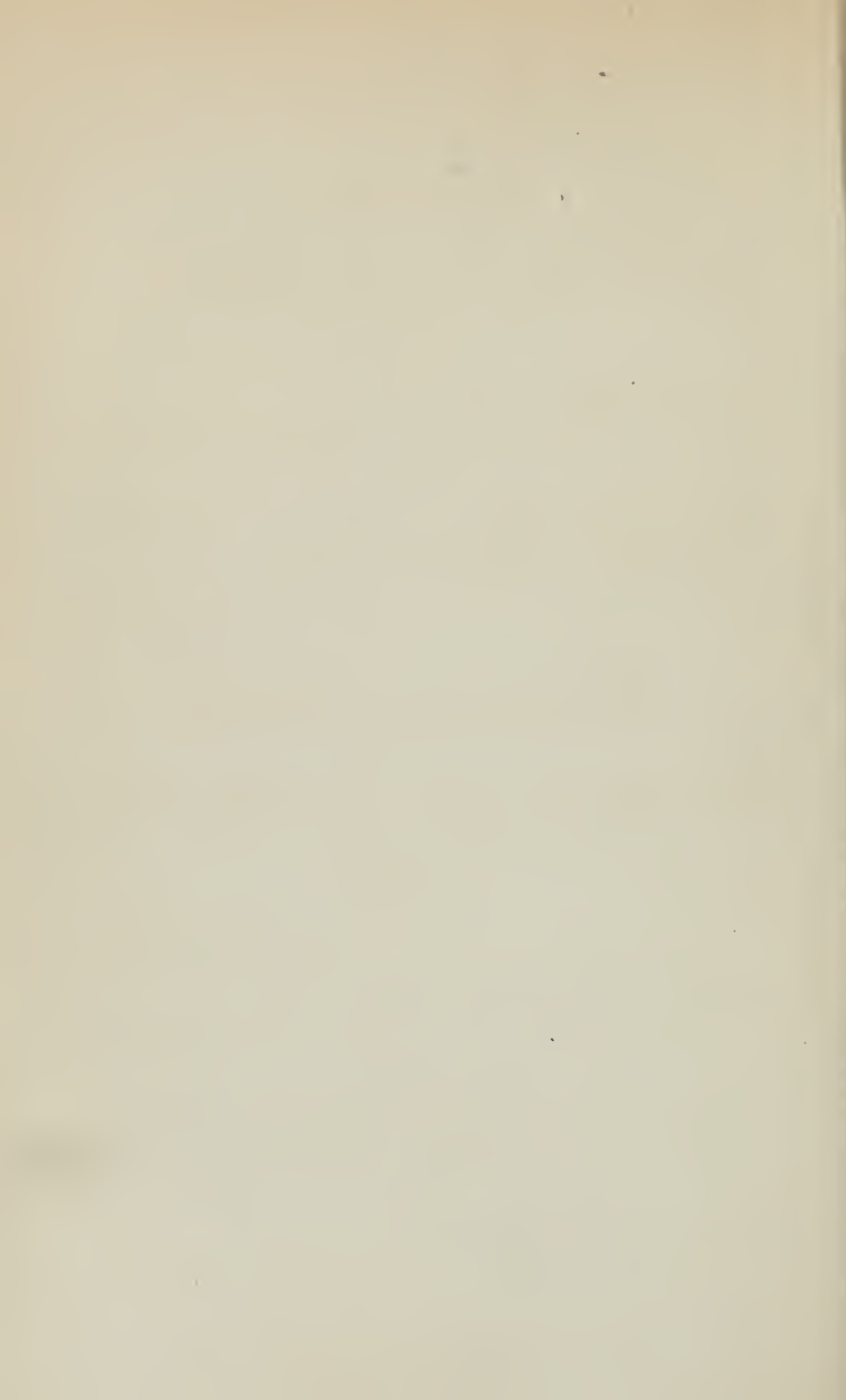
Transcript of Record.

Upon Appeal from United States District Court of
the Territory of Alaska, Fourth
Division.

Filed

JAN 7 - 1916

F. D. Monckton,
Clerk.



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JACK IRVINE,

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Defendants and Appellees.

Transcript of Record.

**Upon Appeal from United States District Court of
the Territory of Alaska, Fourth
Division.**

Due service and receipt of three copies hereof admitted this.....day of December, 1915.

Attorney for Defendant and Appellee J. A. Healey.

Attorneys for Defendants and Appellees Roy Rutherford and Geo. M. Smith.

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In the District Court for the Territory of Alaska,
Fourth Division.

No. 1938

JACK IRVINE,

Plaintiff and Appellant,

vs.

ANGUS McDOUGALL, J. A. HEALEY, GEORGE
M. SMITH and ROY RUTHERFORD,

Defendants and Appellees.

Names and Addresses of Attorneys of Record:

HARRY E. PRATT, Fairbanks, Alaska,

LOUIS K. PRATT, Fairbanks, Alaska,

Attorneys for Plaintiff and Appellant.

CECIL H. CLEGG, Fairbanks, Alaska,

Attorney for Defendant J. A. Healey.

McGOWAN & CLARK, Fairbanks, Alaska,

Attorneys for Defendants,, George
M. Smith and Roy Rutherford.

Attorneys for Defendants and Appellees.

[Title of Court and Cause.]

Stipulation Relative to Printing Record.

IT IS HEREBY STIPULATED that in printing the papers and records to be used in the hearing in the appeal taken in the above entitled cause for the consideration of the Circuit Court of Appeals for the Ninth Circuit, that the title of the Court and cause in full, on all papers may be omitted, except on the first page of said record, and that there shall be in-

serted in place of said title, the words, "Title of Court and Cause"; also that all endorsements on all papers, except the Clerk's file marks and admission of service, need not be printed.

Dated at Fairbanks, Alaska, this 17th day of November, 1915.

HARRY E. PRATT,

LOUIS K. PRATT,

Attorneys for Plaintiff.

CECIL H. CLEGG,

Atty. for Defendant J. A. Healy.

McGOWAN and CLARK,

Attys. for Defs. Smith & Rutherford.

Filed in the District Court, Territory of Alaska, 4th Div., Nov. 18, 1915. J. E. Clark, Clerk, by Sidney Stewart, Deputy.

[Title of Court and Cause.]

Praeipce for Record.

To J. E. CLARK, Clerk of the above-entitled Court:

YOU WILL PLEASE prepare transcript of record in the above entitled cause to be filed in the office of the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, sitting in San Francisco, California, upon the appeal heretofore perfected to said Court. and will include in said transcript the following papers and records, to-wit:

1—Plaintiff's amended complaint as further amended by interlineation.

2—Defendant Healy's separate answer to said

amended complaint.

3—Separate answer of defendants Smith and Rutherford, to said amended complaint, which answer is designated by them, "Answer to Second amended complaint."

4—Order of the Court of May 21st, 1915, dismissing action as to defendants, McGowan, Clark, Cascaden and Kopitz.

5—Order of Court of October 27, 1915, refusing plaintiff's proposed findings of fact and conclusions of law and overruling plaintiff's objections to findings of fact prepared consonant to Court's decision.

6.—Findings of fact and conclusions of law signed by the Court October 29, 1915.

7—Order of Court of October 12, 1915, substituting attorneys.

8—Order of Court of November 4, 1915, denying motion for new trial.

9—Judgment and decree, signed November 9, 1915.

10—Bill of exceptions and order allowing and settling the same.

11—Petition for appeal.

12—Order allowing appeal, fixing appeal bond and designating place of hearing.

13—Bond on appeal.

14—Citation on appeal. (Original.)

15—Order extending time within which to docket appeal. (Original.)

16—Praeipie for record.

17—Stipulation relative to printing record. (Original.)

18—Assignment of Errors.

This transcript to be prepared as required by law and the orders and rules of this Court forwarded to the aforesaid Circuit Court of Appeals to be filed in the office of the Clerk of said Court of Appeals for the Ninth Circuit, in said San Francisco, California, on or before the 31st day of January, 1916, pursuant to said order of this Court extending time.

Dated at Fairbanks, Alaska, this 18th day of November, 1915.

HARRY E. PRATT,

LOUIS K. PRATT,

Attorneys for Plaintiff.

Filed in the District Court, Territory of Alaska, 4th Div., Nov. 18, 1915. J. E. Clark, Clerk, By Sidney Stewart, Deputy.

[Title of Court and Cause.]

Amended Complaint.

Comes now the above named plaintiff and for a first cause of action against the defendants alleges:

1. That on or about the 3rd day of February, 1913, defendant Angus McDougall hired him to work as a miner upon the Pioneer Quartz Mining Claim situated in the Fairbanks Precinct, Territory of Alaska, at the head of Fairbanks Creek on the left limit thereof on the divide between said creek and Wolf Creek, agreeing to pay him therefor the sum

of Five and 50-100 Dollars (\$5.50) per day for each day of nine hours he worked thereon and an additional dollar for each hour of overtime; that pursuant to said agreement this plaintiff upon said date commenced work upon said claim, at no time ceasing work for a period of Thirty days and between said date and May 12th, 1913, the same being the last day he worked thereon, he worked ninety-four (94) days and an additional one hundred ninety-seven (197) hours as overtime, for which there is due and owing, over all credits and set-offs, the sum of Seven hundred fourteen dollars, (\$714.00), no part of which has been paid.

2. That all of the above mentioned work, performed by plaintiff, was for the development and improvement of said mining claim, to-wit, sinking the main shaft, running tunnels, prospecting and so forth, upon said claim, and said work in fact did develop and improve said mining claim.

3. That the owners of said mining claim upon the 25th day of May, 1912 were Angus McDougall, Michael Hyland, Thos. A. McGowan, John A. Clark, who upon said 25th day of May, 1912, executed a written lease to the said Angus McDougall upon said mining claim for a period of Ten (10) years from June 1st 1912, which said lease was recorded in the office of the commissioner and ex--officio recorder for the Fairbanks Precinct, Territory of Alaska, upon the 2nd day of September 1912, in book No. 5 of Leases, page 337 and numbered instrument 37027.

That said Angus McDougall is now the owner of said leasehold interest and for all times herein mentioned the said claim has been and now is owned by the above named owners except one Dave Cascaden who has succeeded to the interest of said Michael Hyland in said claim.

4. That the said first mentioned owners and the said Cascaden at all times knew that said McDougall was developing said claim and improving it under said lease and knew that said McDougall had hired men, including this affiant, to work upon said mine and knew that said men were developing and improving said claim. At no time did said first mentioned owners or Dave Cascaden post any notices negating liabilities for said work or any notices whatever.

5. That at all times this plaintiff has claimed the benefits of the laws of Alaska relative to Mechanics liens and upon the 7th day of June, 1913, claimed a lien upon said leasehold interest and also upon said mining claim for the above named amount due him for said labor, and upon said 7th day of June filed for record, in the office of the recorder of the precinct wherein said premises are situated, to-wit, the Fairbanks Precinct, Alaska, a sworn statement, containing a true statement of his demand after deducting all just credits and set-offs, describing the premises sufficiently for identification, claiming a mechanic's lien, for said amount, upon said leasehold interest and upon said mining claim, a copy of which said claim is hereto attached marked exhibit 1, and by

reference made a part hereof.

6. That plaintiff was compeled to, and did pay, the sum of \$2.25 for the recording of said lien statement and a reasonable sum for attorney's fees for the foreclosure thereof is the sum of \$143.00.

7. That the defendant John A. Healey, upon the 12th day of May, 1913, in case number 1907, this court, caused a writ of attachment to issue against Angus McDougall also defendant in said action number 1907, and levied the same upon said Pioneer Quartz claim and the buildings thereon, which said attachment is in full force.

8. That the defendant, John Kopitz, claims some interest or lien, in and to said Pioneer Quartz claim adverse to plaintiff.

9. That on or about the 3rd day of June 1913, said Angus McDougall made an assignment of certain property to George M. Smith and Roy Rutherford, for the benefit of his creditors, assigning, among other property, said Pioneer Lode claim and his leasehold interest therein subject to certain conditions, which said assignment is recorded in the office of the recorder for the Fairbanks Precinct, Alaska, in vol. 17 of deeds, page 449, and number, instrument 39019, being filed for record upon the 18th day of June 1913.

Plaintiff for a SECOND CAUSE OF ACTION against defendants alleges:

1. That on or about the 18th day of January, 1913, defendant Angus McDougall hired James Fox

to work upon the Pioneer Quartz mining claim, situated in the Fairbanks Precinct, Territory of Alaska, at the head of Fairbanks creek on the left limit thereof on the divide between said creek and Wolf creek, agreeing to pay him therefore the sum of \$5.00 per day for each day of 9 hours he worked thereon and an additional dollar for each hour of over-time; that pursuant to said agreement said James Fox, upon said date, commenced work upon said claim, at no time ceasing work for a period of 30 days, and between said date and May 11 1913, the same being the last day he worked thereon, he worked 110 days and an additional 125 hours as over-time, for which there is due and owing, over all credits and set-offs, \$675.00 no part of which has been paid.

2. That all of the above mentioned work, performed by James Fox, was for the development and improvement of said mining claim, to-wit: running the engine in connection with sinking the main shaft, running tunnels, prospecting, etc.. upon said claim, and said work in fact did development and improve said mining claim.

3. Plaintiff refers to embraces herein and makes the contents of paragraphs number three, four, seven, eight and nine, of the first cause of action herein, a part hereof.

4. That at all times James Fox has claimed the benefit of the laws of Alaska relative to mechanic's liens and upon the 2nd day of June 1913, claimed a lien upon said leasehold interest and also upon said

mining claim for the above named sum of \$675.00 due him for said labor, and upon said 2nd day of June filed for record, in the office of the recorder of the precinct wherein said premises are situated, to-wit, the Fairbanks Precinct, Alaska, a sworn statement containing a true statement of his demands after deducting all just credits and set-offs, describing the premises sufficiently for identification claiming a mechanic's lien for said amount upon said leasehold interest and upon said mining claim, a copy of which said claim is hereto attached marked exhibit 2, and by reference made a part hereof.

5. That James Fox was compelled to, and did pay the sum of \$2.25 for the recording of said lien and a reasonable sum for the foreclosure thereof is the sum of \$135.00 as attorneys fees.

6. That subsequent to the filing of said lien, said Fox, for a valuable consideration, assigned said claim against said McDougall and all the rights by virtue of having filed said lien, to the plaintiff, who is now the holder and owner thereof.

Plaintiff for a THIRD CAUSE OF ACTION against defendants alleges:

1. That on or about the 18th day of January, 1913, defendant Angus McDougall hired Donald Hayes to work as a miner upon the Pioneer Quartz Mining claim situated in the Fairbanks Precinct, Territory of Alaska, at the head of Fairbanks Creek on the left limit thereof on the divide between said creek and Wolf Creek, agreeing to pay him therefor the

sum of \$5.50 per day for each day of nine hours he worked thereon; that pursuant to said agreement Donald Hayes, upon said date commenced work upon said claim at no time ceasing to work for a period of thirty days, and between said date and May 12th 1913 the same being the last day he worked thereon he worked 106 1-2 days for which there is due and owing, over all credits and set-offs, \$585.75 no part of which has been paid.

2. That all of the above mentioned work, performed by said Hayes, was for the development and improvement of said mining claim, to-wit, sinking the main shaft, running tunnels, prospecting etc. upon said claim, and said work did in fact develop and improve said claim.

3. Plaintiff refers to embraces herein and makes the contents of paragraphs three, four, seven, eight and nine of the first cause of action herein a part hereof.

4. That at all times said Hayes has claimed the benefits of the laws of Alaska relative to mechanic's liens and upon the second day of June 1913 claimed a lien upon said leasehold interest and also upon said mining claim for the above named amount due him for said labor and upon the said 2nd day of June filed for record in the office of the recorder of the precinct wherein said premises are situated, to-wit, the Fairbanks Precinct, Alaska, a sworn statement containing a true statement of his demand after deducting all just credits and set-offs, describing the

premises sufficiently for identification, claiming a mechanics lien for said amount upon said leasehold interest and upon said mining claim, a copy of which said claim is hereto attached marked exhibit 3 and by reference made a part hereof.

5. That said Hayes was compeled to and did pay the sum of \$2.25 for the recording of said lien and a reasonable sum for the foreclosing thereof is the sum of \$117.00 attorneys fees.

6. That subsequent to the filing of said lien said Hayes, for a valuable consideration, assigned said claim against McDougall and all rights by virtue of having filed said lien to the plaintiff who is now the owner and holder thereof.

For a FOURTH CAUSE OF ACTION AGAINST defendants plaintiff alleges:

1. That on or about the 9th day of December 1912, defendant Angus McDougall hired John Wensel to work upon the Pioneer Quartz Mining claim in the Fairbanks Precinct, Territory of Alaska, at the head of Fairbanks Creek on the left limit thereof on the divide between said creek and Wolf Creek, agreeing to pay him therefor the sum of \$5.00 for each day he worked thereon; that pursuant to said agreement said Wensel, upon said date commenced work upon said claim and between said date and May 12th 1913, the same being the last day he worked thereon he worked 126 1-2 days, upon which he has been paid \$14.00 and no more and there is still due and owing therefor over all credits and set-offs, the

sum of \$623.50.

2. That all of the above mentioned work performed by John Wensel was for the development and improvement of said mining claim, to-wit; cooking for the men sinking the main shaft, running tunnels, prospecting etc. upon said claim, and said work in fact did develop and improve said claim.

3. Plaintiff refers to embraces herein and makes the contents of paragraphs three, four, seven, eight, and nine of the first cause of action herein a part hereof.

4. That at all times said Wensel has claimed the benefits of the laws of Alaska relative to mechanics liens and upon the 27th day of May 1913, claimed a lien upon said leasehold interest and also upon said mining claim for the above amount due him for said labor and upon said 27th day of May 1913, filed for record in the office of the Recorder of the precinct wherein said premises are situated, to-wit, the Fairbanks Precinct, Territory of Alaska, a sworn statement containing a true statement of his demand after deducting all just credits and set-offs, describing the premises sufficiently for identification, claiming a mechanics lien for said amount upon said leasehold interest and upon said mining claim, a copy of which said claim is hereto attached and marked exhibit 4, and by reference made a part hereof.

5. That said Wensel was compeled to and did pay the sum of \$2.25 for recording said lien and a reasonable sum for attorneys fees for foreclosing the same

is the sum of \$125.00.

6. That subsequent to the filing of said lien said Wensel for a valuable consideration, assigned said claim and all rights arising by virtue of having filed said lien, to the plaintiff who is now the owner and holder thereof.

Plaintiff, for a FIFTH CAUSE OF ACTION against defendants alleges:

1. That on or about the 18th day of April 1913, defendant Angus McDougall hired John Sully to work upon the Pioneer Quartz mining claim situated in the Fairbanks Precinct, Territory of Alaska, at the head of Fairbanks Creek on the left limit thereof, on the divide between said creek and Wolf creek, agreeing to pay him therefor the sum of \$1.50 per hour for each hour he worked thereon; that pursuant to said agreement said Sully, upon said date commenced work upon said claim and between said date and May 5th 1913, the same being the last day he worked thereon, he worked 178 hours, for which there is due and owing, over all credits and set-offs, the sum of \$267.00 no part of which has been paid.

2. That all of the above mentioned work performed by said Sully was for the development and improvement of said mining claim, to-wit; building a meat cache, ore bunker and tressel approach thereto, which said structures were necessary for the development of said mine and the provisions of the men engaged in such development, and said work did in fact develop and improve said claim.

3. Plaintiff refers to embraces herein and makes the contents of paragraphs three, four, seven, eight and nine, of the first cause of action herein, a part hereof.

4. That at all times said Sully has claimed the benefits of the laws of Alaska relative to mechanic's liens and upon the 27th day of May 1913 claimed a lien upon the above named structures and also upon the ground under and surrounding the same necessary for their reasonable use; also upon said leasehold interest and said mining claim, for the above named amount due him for said labor and upon the said 27th day of May 1913, filed for record, in the office of the recorder of the precinct wherein said premises are situated, to-wit the Fairbanks Precinct, Alaska, a sworn statement, containing a true statement of his demand after deducting all just credits and set-offs, describing the premises sufficiently for identification, claiming a mechanic's lien for said amount upon said structures, the necessary surrounding ground, the said leasehold interest and said mining claim, a copy of which said claim is hereto attached and marked exhibit 5 and by reference made a part hereof.

5. That said Sully was compelled to and did pay the sum of \$2.25 for the recording of said lien and a reasonable sum for attorney's fee for the foreclosure thereof is \$54.00.

6. That subsequent to the filing of said lien said Sully, for a valuable consideration, assigned said

claim and all rights arising by virtue of having filed said lien, to the plaintiff who is now the owner and holder thereof.

For a SIXTH CAUSE OF ACTION against defendants, plaintiff alleges:

1. That on or about the 9th day of April 1913, defendant Angus McDougall hired Thomas King to work upon the Pioneer Quartz mining claim situated in the Fairbanks Precinct, Territory of Alaska, at the head of Fairbanks Creek on the left limit thereof, on the divide between said creek and Wolf Creek, agreeing to pay him therefor the sum of \$5.00 per day for each day of nine hours he worked thereon; that pursuant to said agreement said King, upon said date commenced work and at no time ceased work for a period of 30 days and between said date and May 12th 1913, the same being the last day he worked thereon, he worked 33 days for which there is due and owing, over all credits and set-offs, the sum of \$165.00, no part of which has been paid.

2. That all of the above mentioned work performed by said King was for the development and improvement of said mining claim, to-wit; necessary work in and in connection with running tunnels, prospecting etc. upon said claim, and said work did in fact improve and develop said claim.

3. Plaintiff refers to embraces herein and makes the contents of paragraphs three, four, seven, eight and nine, of the first cause of action herein a part hereof.

4. That at all times Thomas King has claimed the benefits of the laws of Alaska relative to mechanic's liens and upon the 28th day of May 1913, claimed a lien upon said leasehold interest and also upon said mining claim for the above named amount due him for said labor, and upon said 28th day of May filed for record, in the office of the recorder of the precinct wherein said premises are situated, to-wit, the Fairbanks Precinct, Alaska, a sworn statement containing a true statement of his demand after deducting all just credits and set-offs, describing the premises sufficiently for identification claiming a mechanic's lien for said amount upon said leasehold interest and also upon said mining claim, a copy of which said claim is hereto attached marked exhibit 6, and by reference made a part hereof.

5. That said King was compelled to and did pay the sum of \$2.25 for the recording of said lien and a reasonable sum for attorneys fees for the foreclosure thereof is \$33.00.

6. That subsequent to the filing of said lien said King, for a valuable consideration, assigned said claim against McDougall, and all rights arising by virtue of having filed said lien to the plaintiff who is now the owner and holder thereof.

Plaintiff, for a SEVENTH CAUSE OF ACTION against defendants alleges:

1. That on or about the 28th day of December 1912, defendant Angus McDougall hired Henry Berks to work upon the Pioneer Quartz mining claim situ-

ated in the Fairbanks Precinct Territory of Alaska, at the head of Fairbanks Creek on the left limit thereof on the divide between said creek and Wolf Creek, agreeing to pay him therefor the sum of \$5.50 per day for each day of 9 hours he worked thereon; that pursuant to said agreement said Berks, upon said date, commenced work upon said claim, at no time ceasing work for a period of 30 days, and between said date and May 12th 1913, the same being the last day he worked thereon, he worked 123 1-2 days, for which there is due and owing, over all credits and set-offs, the sum of \$679.25 no part of which has been paid.

2. That all of the above mentioned work performed by said Berks was for the development and improvement of said mining claim, to-wit; sinking the main shaft, running tunnels, prospecting etc. upon said claim and said work in fact did develop and improve said claim.

3. Plaintiff refers to embraces herein and makes the contents of paragraphs three, four, seven, eight and nine of the first cause of action herein, a part hereof.

4. That at all times said Berks has claimed the benefits of the laws of Alaska relative to mechanic's liens and upon the 7th day of June 1913, claimed a lien upon said lease-hold interest and also upon said mining claim for the above named amount due for said labor and upon said 7th day of June filed for record in the office of the recorder of the pre-

cinct wherein said premises are situated, to-wit, the Fairbanks, Precinct, Alaska, a sworn statement, containing a true statement of his demand after deducting all just credits and set-offs, describing said premises sufficiently for identification, claiming a mechanic's lien for said amount upon said lease-hold interest and upon said mining claim, a copy of which said claim is hereto attached and marked exhibit 7 and by reference made a part hereof.

5. That said Berks was compelled to and did pay the sum of \$2.25 for recording said lien claim and a reasonable sum for attorneys fees for the foreclosure thereof is \$136.00.

6. That subsequent to the filing of said lien said Berks, for a valuable consideration, assigned said claim and all rights arising by virtue of having filed said lien, to the plaintiff who is now the owner and holder thereof. .

Wherefore plaintiff prays judgment against defendants as follows:

1. Against Angus McDougall for the sum of \$3,709.50 together with interest thereon at 8 per cent per annum from June 15th 1913; for the sum of \$743.00 as attorneys fees;

2. Against the defendant J. A. Healey, decreeing his said attachment lien subsequent and subservient to plaintiff's liens with interest and attorney's fees, and restraining said Healey from attempting any sale of said ground under said attachment lien;

3. Against George M. Smith and Roy Rutherford

decreeing their said title in and to said claim and buildings to be subsequent and subservient to plaintiffs liens.

4. Against the defendant John Kopitz requiring him to set up his claim against said claim and decreeing the same subsequent to plaintiff's lien.

5. Foreclosing plaintiff's said liens against said claim said leasehold interest and buildings thereon and ordering the sale thereof to satisfy said principle amount of \$3709.50, with interest thereon at 8 per cent per annum from June 15th 1913 and attorneys fees to the amount of \$743.00.

6. Decreeing said claim and the whole title thereto subject to plaintiffs liens including attorney's fees, and cutting off forever, the interest of the defendants McDougall, Thomas A. McGowan, John A. Clark, and Dave Cascaden, therein.

7. For costs and disbursements and such relief as to the Court may seem equitable and just.

LOUIS K. PRATT & SON,

Louis K. Pratt & Son,

Attorneys for Plaintiff.

United States of America,

Territory of Alaska,—ss.

Jack Irvine being first duly sworn on oath says: I am the plaintiff in the above entitled suit; I have read the foregoing complaint and the allegations therein contained are true as I verily believe.

JACK IRVINE,

Subscribed and sworn to before me this 15th day

of October, 1913.

(Seal)

HARRY E. PRATT.

Notary Public for Alaska.

My Commission Expires June 24th, 1916.

EXHIBIT 1.

CLAIM FOR MECHANICS LIEN.

United States of America,
Territory of Alaska,—ss.

JACK IRVINE, being first duly sworn, on oath says:— That on or about the 3rd day of February, 1913, one, Angus McDougall, hired him to work upon the Pioneer Quartz Mining Claim situate at the head of Fairbanks Creek on the left limit thereof on the divide between said creek and Wolf Creek, agreeing to pay him therefor, the sum of \$5.50 per day for each day of nine hours he worked thereon, and an additional dollar for each hour of overtime; that pursuant to said contract, this affiant, upon said date, commenced work upon said claim, at no time ceasing work for a period of thirty days, and between said date and May 12th, 1913, the same being the last day he worked thereon, he worked 94 days and an additional 197 hours as overtime, for which there is due and owing \$714.00, no part of which has been paid, and he now claims a lien for said amount with interest from date at 8 per cent per year, upon said mining claim and also upon the leasehold interest hereinafter described of the said Angus McDougall, in said claim; that the above mentioned time was put in

wholly in doing development and improvement work upon said mine, to-wit: sinking the main shaft, running tunnels, prospecting, etc. upon said claim.

That the owners of said mining claim, upon the 25th day of May, 1912, were Angus McDougall, Michael Hyland, Thomas A. McGowan and John A. Clark, who, upon said date, executed a written lease to the said Angus McDougall upon said mining claim, for a period of ten years from June 1st, 1912, and said McDougall is now the owner of said leasehold interest; that for all times since said 25th day of May, 1912, the owners of said claim have been and now are the same as above mentioned, except that one, Dave Cascaden, has succeeded to the interest of Michael Hyland in said claim; that said first mentioned owners and said Cascaden knew said McDougall was developing said claim under said lease and knew that said McDougall, with hired men including this affiant, was developing and improving said mine, as aforesaid, and at no time did said first mentioned owners or Dave Cascaden post any notices negating liability for said work.

JACK IRVINE.

Subscribed and sworn to before me this 20th day of May, 1913.

(Seal)

HARRY E. PRATT,
Notary Public in and for Alaska.

EXHIBIT 2.

CLAIM FOR MECHANICS LIEN.

United States of America,
Territory of Alaska,—ss.

JAMES FOX, being first duly sworn, on oath says:
—That on or about the 18th day of January, 1913, one, Angus McDougall, hired him to work upon the Pioneer Quartz Mining Claim situate at the head of Fairbanks Creek on the left limit thereof, on the divide between said creek and Wolf Creek, agreeing to pay him therefor the sum of \$5.00 per day for each day of nine hours he worked thereon, and an addition dollar for each hour of overtime; that pursuant to said contract, this affiant, upon said date, commenced work upon said claim, at no time ceasing work for a period of thirty days, and between said date and May 11th, 1913, the same being the last day he worked thereon, he worked 110 days and an additional 125 hours as overtime, for which there is due and owing \$675.00, no part of which has been paid and he now claims a lien for said amount with interest from date at 8 per cent per year, upon said mining claim and also upon the leasehold interest hereinafter described of said Angus McDougall in said claim; that the above mentioned time was put in wholly in running the engine in connection with sinking the main shaft, running tunnels, prospecting, etc. upon said claim.

That the owners of said mining claim, upon the 25th day of May, 1912, were Angus McDougall,

Michael Hyland, Thomas A. McGowan and John A. Clark, who, upon said date, executed a written lease to the said Angus McDougall upon said mining claim, for a period of ten years from June 1st, 1912, and said McDougall is now the owner of said leasehold interest; that for all times since said 25th day of May, 1912, the owners of said claim have been and now are the same as above mentioned, except that one, Dave Cascaden, has succeeded to the interest of Michael Hyland in said claim; that said first mentioned owners and said Cascaden knew said McDougall was developing said claim under said lease, and knew that said McDougall, with hired men including this affiant, was developing and improving said mine, as aforesaid, and at no time did said first mentioned owners or Dave Cascaden post any notices negating liability for said work.

JAMES FOX,

Subscribed and sworn to before me this 20th day of May, 1913.

(Seal)

HARRY E. PRATT,

Notary Public in and for Alaska.

EXHIBIT 3.

CLAIM FOR MECHANICS LIEN.

United States of America,
Territory of Alaska,—ss.

DONALD HAYES, being first duly sworn, on oath says:—That on or about the 18th day of January 1913, one, Angus McDougall, hired him to work upon

the Pioneer Quartz Mining Claim situate at the head of Fairbanks Creek on the left limit thereof, on the divide between said creek and Wolf creek, agreeing to pay him therefor, the sum of \$5.50 per day for each day of nine hours he worked thereon; that pursuant to said contract, this affiant, upon said date, commenced work upon said claim, at no time ceasing work for a period of thirty days, and between said date and May 12th 1913, the same being the last day he worked thereon, he worked 106 1-2 days, for which there is due and owing \$585.75, no part of which has been paid, and he now claims a lien for said amount with interest from date at 8 per cent per year, upon said mining claim and also upon the lease-hold interest hereinafter described, of the said Angus McDougall, in said claim; that the above mentioned time was put in wholly in doing development and improvement work upon said mine, to-wit; sinking the main shaft, running tunnels, prospecting, etc. upon said claim.

That the owners of said mining claim, upon the 25th day of May 1912, were Angus McDougall, Michael Hyland, Thomas A. McGowan and John A. Clark, who, upon said date executed a written lease to the said Angus McDougall upon said mining claim for a period of ten years from June 1st 1912, and said McDougall is now the owner of said lease-hold interest; that for all times since said 25th day of May, 1912, the owners of said claim have been, and now are, the same as above mentioned, except that

one, Dave Cascaden, has succeeded to the interest of Michael Hyland in said claim: that said first mentioned owners and said Cascaden knew that said McDougall was developing said claim under said lease, and knew that said McDougall, with hired men, including this affiant, was developing and improving said mine, as aforesaid, and at no time did said first mentioned owners or Dave Cascaden post any notices negating liability for said work.

DONALD HAYES

Subscribed and sworn to before me this 20th day of May 1913.

(Seal)

HARRY E. PRATT

Notary Public in and for Alaska.

EXHIBIT 4.

CLAIM FOR MECHANICS LIEN.

United States of America,
Territory of Alaska,—ss.

JOHN WENZEL, being first duly sworn, on oath says:—That on or about the 3rd day of May, 1913, one, Angus McDougall, hired him to work upon the Pioneer Quartz Mining Claim situate at the head of Fairbanks Creek on the left limit thereof, on the divide between said creek and Wolf Creek, agreeing to pay him therefor the sum of \$5.00 per day for each day of nine hours he worked thereon; that pursuant to said contract, this affiant, upon said date, commenced worked upon said claim, at no time ceasing work for a period of thirty days, and between

said date and May 12, 1913, the same being the last day he worked thereon, he worked 9 1-2 days, for which there is due and owing \$47.50, no part of which has been paid, and he now claims a lien for said amount with interest from date at 8 per cent per year, upon said mining claim and also upon the leasehold interest of the said McDougall in said claim; that the above mentioned time was put in wholly in cooking for the men sinking the main shaft; running tunnels, prospecting, etc. on said claim.

That the owners of said mining claim, upon the 25th day of May, 1912, were Angus McDougall, Michael Hyland, Thomas A. McGowan and John A. Clark, who, upon said date, executed a written lease to the said Angus McDougall upon said mining claim, for a period of ten years from June 1st, 1912, and said McDougall is now the owner of said leasehold interest; that for all times since said 25th day of May, 1913, the owners of said claim have been and now are the same as above mentioned, except that one, Dave Cascaden, has succeeded to the interest of Michael Hyland in said claim; that said first mentioned owners and said Cascaden knew said McDougall, was developing said claim under said lease and knew that said McDougall, with hired men, including this affiant, was developing and improving said mine, as aforesaid, and at no time did said first mentioned owners or Dave Cascaden, post any notices negativ-

ing liability for said work.

JOHN WENSEL

Subscribed and sworn to before me this 20th day of May, 1913.

(Seal)

HARRY E. PRATT.

Notary Public in and for Alaska.

Endorsed:

Claim for Mechanics Lien. JOHN WENZEL.

EXHIBIT 5.

CLAIM FOR MECHANIC'S LIEN.

United States of America,
Territory of Alaska,—ss.

JOHN SULLY being first duly sworn on oath says:—that on or about the 18th day of April 1913, one Angus McDougall hired him to work, to build a meat cache, ore bunker and tressel approach there-to, upon the Pioneer Quartz Mining claim situate at the head of Fairbanks Creek on the left limit there-of, on the divide between said creek and Wolf Creek, agreeing to pay him therefor the sum of \$1.50 per hour; that pursuant to said contract, this affiant, upon said date, commenced said work and completed it between said date and May 5th, 1913, the same being the last day he worked thereon, working there-on 178 hours, for which there is due, owing and unpaid the sum of \$267.00 for which this affiant now claims a lien for said amount with interest at 8 per cent per annum from date hereof, upon said meat cache, ore bunker and tressel approach, together with sufficient ground surrounding the same for its

convenient use; affiant also claims a lien for said amount upon said mining claim and also upon the leasehold interest, hereinafter described, of the said Angus McDougall in said claim.

That the owners of said mining claim, upon the 25th day of May 1912, were Angus McDougall, Michael Hyland, Thomas A. McGowan, and John A. Clark, who, upon said date, executed a written lease to the said Angus McDougall upon said mining claim, for a period of ten years from June 1st 1912, and said McDougall is now the owner of said leasehold interest; that for all times since said 25th day of May, 1913, the owners of said claim have been and now are the same as above mentioned, except that one Dave Cascaden has succeeded to the interest of Michael Hyland in said claim; that the said first mentioned owners and said Dave Cascaden knew said McDougall was developing said claim under said lease and knew said McDougall, with hired men, including this affiant was developing said mining claim as aforesaid and building said buildings but at no time posted any notices negating liability for said work.

JOHN SULLY.

Subscribed and sworn to before me this 20th day of May 1913.

'(Seal)

HARRY E. PRATT,
Notary Public in and for Alaska.

EXHIBIT 6.

CLAIM FOR MECHANICS LIEN.

United States of America,
Territory of Alaska,—ss.

THOMAS KING, being first duly sworn, on oath says:—That on or about the 9th day of April, 1913, one, Angus McDougall, hired him to work upon the Pioneer Quartz Mining Claim situate at the head of Fairbanks Creek on the left limit thereon, on the divide between said creek and Wolf Creek, agreeing to pay him therefor the sum of \$5.00 per day for each day of nine hours he worked thereon; that pursuant to said contract, this affiant, upon said date, commenced work upon said claim, at no time ceasing work for a period of thirty days, and between said date and May 12th, 1913, the same being the last day he worked thereon, he worked 33 days, for which there is due and owing \$165.00, no part of which has been paid, and he now claims a lien for said amount with interest from date at 8 per cent per year, upon said mining claim and also upon the leasehold interest hereinafter described of said Angus McDougall in said claim; that the above mentioned time was put in wholly in development work in and in connection with running tunnels, prospecting etc., upon said claim.

That the owers of said mining claim, upon the 25th day of May, 1912, were Angus McDougall, Michael Hyland, Thomas A. McGowan and John A. Clark, who, upon said date, executed a written lease

to the said Angus McDougall upon said mining claim, for a period of ten years from June 1st, 1912, and said McDougall is now the owner of said leasehold interest; that for all times since said 25th day of May, 1912, the owners of said claim have been and now are the same as above mentioned, except that one, Dave Cascaden, has succeeded to the interest of Michael Hyland in said claim; that said first mentioned owners and said Cascaden knew said McDougall was developing said claim under said lease, and knew that said McDougall, with hired men including this affiant, was developing and improving said mine, as aforesaid, and at no time did said first mentioned owners or Dave Cascaden post any notices negating liability for said work.

TOM KING.

Subscribed and sworn to before me this 28th day of May, 1913.

(Seal)

HARRY E. PRATT,

Notary Public in and for Alaska.

Endorsed:

Claim for Mechanics Lien.

TOM KING.

EXHIBIT 7.

CLAIM FOR MECHANICS LIEN.

United States of America,
Territory of Alaska,—ss.

HENRY BERKS, being first duly sworn, on oath says:—That on or about the 28th day of December, 1912, one, Angus McDougall, hired him to work upon the Pioneer Quartz Mining Claim situate at the head

of Fairbanks Creek on the left limit thereof, on the divide between said Creek and Wolf Creek, agreeing to pay him therefor, the sum of \$5.50 per day for each day of nine hours he worked thereon; that pursuant to said contract, this affiant, upon said date, commenced work upon said claim, at no time ceasing work for a period of thirty days, and between said date and May 12th, 1913, the same being the last day he worked thereon, he worked 123 1-2 days, for which there is due and owing \$679.25, no part of which has been paid, and he now claims a lien for said amount with interest from date at 8 per cent per year, upon said mining claim and also upon the leasehold interest of the said Angus McDougall, in said claim; that the above mentioned time was put in wholly in doing deveolpment and improvement work upon said mine, to-wit: sinking the main shaft, running tunnels, prospecting, etc. upon said claim.

That the owners of said mining claim, upon the 25th day of May, 1912, were Angus McDougall, Michael Hyland, Thomas A. McGowan and John A. Clark, who, upon said date, executed a written lease to the said Angus McDougall upon said mining claim for a period of ten years from June 1st, 1912, and said McDougall is now the owner of said leasehold interest; that for all times since said 25th day of May, 1912, the owners of said claim have been, and now are, the same as above mentioned, except that one, Dave Cascaden, has succeeded to the interest of Michael Hyland in said claim; that said first men-

tioned owners and said Cascaden knew that said McDougall was developing said claim under said lease, and knew that said McDougall, with hired men, including this affiant, was developing and improving said mine, as aforesaid, and at no time did said first mentioned owners or Dave Cascaden post any notices negating liability for said work.

HENRY BERKS.

Subscribed and sworn to before me this 20th day of May, 1913.

(Seal)

HARRY E. PRATT,
Notary Public in and for Alaska.

Service of within amended complaint, by receipt of copy thereof, is hereby acknowledged this 15th day of October, 1913.

CECIL H. CLEGG,
Attorney for deft. Healey.
McGOWAN & CLARK,
JOHN A. CLARK,

Attorneys for defts. Smith and Rutherford.

Endorsed: Filed in the District Court, Territory of Alaska, 4th Div. Oct. 15, 1913. Angus McBride, Clerk, by P. R. Wagner, Deputy.

[Title of Court and Cause.]

Answer of Defendant Healey.

Comes now J. A. Healey, one of the defendants above named and for answer to the amended complaint on file herein, says

1.—That he has no knowledge information or be-

lief as to any of the allegations contained in any of the paragraphs numbered 1, 2, 4, 6, 8 and 9, and basing his denial on such lack of knowledge, information and belief, therefore denies all of the allegations contained in each of said paragraphs and the whole thereof, contained in the FIRST alleged cause of action set up in said amended complaint.

2.—That he admits the allegations contained in paragraph numbered three '(3) contained in said FIRST alleged cause of action set up in said amended complaint.

3.—Denies the allegation contained in paragraph numbered 5 contained in said FIRST alleged cause of action set up in said amended complaint.

4.—Admits the allegations contained in paragraph numbered seven contained in said FIRST alleged cause of action set up in said amended complaint.

It is hereby stipulated by and between the attorneys for plaintiff and defendant Healey that an answer to each of the remaining causes of action in the amended complaint herein may be considered as made and filed with the same admissions and denials where applicable and appropriate as are made in the foregoing answer to the first cause of action, and that the allegations in each of said remaining causes of action as to the assignment of the respective claims of lien sued upon may also be deemed denied upon lack of knowledge, information and belief, and that verification of this answer is waived.

Dated Feb 5 1915.

LOUIS K. PRATT & SON,

Attorney for Plaintiff.

CECIL H. CLEGG,

Attorney for deft. Healey.

CECIL H. CLEGG,

Atty. for deft. J. A. Healey.

Endorsed: Filed in the District Court, Territory of Alaska, 4th Div. Feb. 6, 1915. Angus McBride, Clerk, by P. R. Wagner, Deputy.

[Title of Court and Cause.]

Answer to Second Amended Complaint.

Come now the defendants, George M. Smith and Roy Rutherford, appearing for themselves separately, as Trustees for the creditors of Angus McDougall, the defendant above named, and for answer to plaintiff's amended complaint, as amended by interlineation, admit, deny and allege as follows, to-wit:

I.

For answer to plaintiff's first cause of action, these answering defendants admit the allegations of paragraphs 7 and 9 thereof; and allege that, as to the matters contained in paragraphs 1, 2, 3, 4, 5, 6 and 8 thereof, they have no knowledge or information concerning said allegations, sufficient to form a belief, and basing their denial upon such lack of information and belief, deny each and every allegation therein contained.

II.

For answer to plaintiff's alleged second cause of

action, these answering defendants allege that they have no knowledge or information as to the matters contained in paragraphs 1, 2, 4, 5, and 6, and basing their denial upon such lack of information and belief, deny each and every matter therein contained; as to the matters contained in paragraph 3 thereof, these answering defendants admit the allegations of paragraphs 7 and 9 of plaintiff's first cause of action, made a portion of the second cause of action by reference, but as to the matters and things contained in paragraphs 3, 4 and 8 of plaintiff's first cause of action, made a part of said second cause of action by reference, these answering defendants allege that they have no knowledge or information concerning the same, sufficient to form a belief, and basing their denial upon such lack of information and belief, deny each and every allegation therein contained.

III.

For answer to plaintiff's alleged third cause of action, these answering defendants allege that they have no knowledge or information as to the matters contained in paragraphs 1, 2, 4, 5, and 6, and basing their denial upon such lack of information and belief, deny each and every matter contained therein; as to the matters contained in paragraph 3 thereof, these answering defendants admit the allegations of paragraphs 7 and 9 of plaintiff's first cause of action, made a portion of the third cause of action by reference, but as to the matters contained in paragraphs 3, 4 and 8 of plaintiff's first cause of action,

made a part of said third cause of action by reference, these answering defendants allege that they have no knowledge or information concerning the same, sufficient to form a belief, and basing their denial upon such lack of information and belief, deny each and every allegation therein contained.

IV.

For answer to plaintiff's alleged fourth cause of action, these answering defendants allege that they have no knowledge or information as to the matters contained in paragraphs 1, 2, 4, 5 and 6, and basing their denial upon such lack of information and belief, deny each and every matter therein contained; as to the matters contained in paragraph 3 thereof, these answering defendants admit the allegations of paragraphs 7 and 9 of plaintiff's first cause of action, made a portion of the fourth cause of action by reference, but as to the matters contained in paragraphs 3, 4 and 8 of plaintiff's first cause of action, made a part of said fourth cause of action by reference, these answering defendants allege that they have no knowledge or information concerning the same, sufficient to form a belief, and basing their denial upon such lack of information and belief, deny each and every allegation therein contained.

V.

For answer to plaintiff's alleged fifth cause of action, these answering defendants allege that they have no knowledge or information as to the matters contained in paragraphs 1, 2, 4, 5 and 6, and basing

their denial upon such lack of information and belief, deny each and every matter therein contained; as to the matters contained in paragraph 3 thereof, these answering defendants admit the allegations of paragraphs 7 and 9 of plaintiff's first cause of action, made a portion of the fifth cause of action by reference, but as to the matters contained in paragraphs 3, 4 and 8 of plaintiff's first cause of action, made a part of said fifth cause of action by reference, these answering defendants allege that they have no knowledge or information concerning the same, sufficient to form a belief, and basing their denial upon such lack of information and belief, deny each and every allegation therein contained.

VI.

For answer to plaintiff's alleged sixth cause of action, these answering defendants allege that they have no knowledge or information as to the matters contained in paragraphs 1, 2, 4, 5 and 6, and basing their denial upon such lack of information and belief, deny each and every matter therein contained; as to the matters contained in paragraph 3 thereof, these answering defendants admit the allegations of paragraphs 7 and 9 of plaintiff's first cause of action, made a portion of the sixth cause of action by reference, but as to the matters contained in paragraphs 3, 4, and 8 of plaintiff's first cause of action, made a part of said sixth cause of action by reference, these answering defendants allege that they have no knowledge or information concerning the same, sufficient

to form a belief, and basing their denial upon such lack of information and belief, deny each and every allegation therein contained.

VII.

For answer to plaintiff's alleged seventh cause of action, these answering defendants allege that they have no knowledge or information as to the matters contained in paragraphs 1, 2, 4 and 5 and 6, and basing their denial upon such lack of information and belief, deny each and every matter therein contained; as to the matters contained in paragraph 3 thereof, these answering defendants admit the allegations of paragraphs 7 and 9 of plaintiff's first cause of action, made a portion of the seventh cause of action by reference, but as to the matters contained in paragraphs 3, 4 and 8 of plaintiff's first cause of action, made a part of the seventh cause of action by reference, these answering defendants allege that they have no knowledge or information concerning the same, sufficient to form a belief, and basing their denial upon such lack of information and belief, deny each and every allegation therein contained.

WHEREFORE these answering defendants pray that the plaintiff take nothing by his said action and that they have judgment for their costs incurred herein.

McGOWAN & CLARK,
Attorneys for Defendants Smith and Rutherford.

United States of America,
Territory of Alaska,—ss..

GEO. M. SMITH, being first duly sworn, on oath deposes and says that he is one of the answering defendants named in the foregoing answer, and makes this verification in his own behalf and in behalf of his co-defendant, Roy Rutherford, as Trustees for the creditors of Angus McDougall, and individually; that he has read the foregoing answer, knows the contents thereof, and the statements therein made are true as he verily believes.

GEORGE M. SMITH.

Subscribed and sworn to before me this 27 day of March, 1915.

(Seal)

JOHN A. CLARK,

Notary Public for Alaska. My Commission expires
Apr. 24, 1918.

Due service of the within answer and receipt of a copy thereof are hereby acknowledged this..... day of March, 1915.

LOUIS K PRATT & SON,

Attorney for Plaintiff.

Endorsed: Filed in the District Court, Territory of Alaska, 4th Div. March 27, 1915. Angus McBride, Clerk.

[Title of Court and Cause.]

Order of Dismissal as to Certain Defendants.

On motion of Harry E. Pratt, attorney for plaintiff, John A. Clark, attorney for defendants, consent-

ing thereto, the Court ordered the cause dismissed as to the defendants John A. Calrk, Thos. A. McGowan, Dave Cascaden and John Kopitz.

CHARLES E. BUNNELL,
District Judge.

[Title of Court and Cause.]

Bill of Exceptions.

BE IT REMEMBERED that this cause came on regularly for trial before the Honorable Charles E. Bunnell, Judge, presiding, in the above entitled Court, on the 21st day of May, 1915, at 10 o'clock A. M. Harry E. Pratt, appearing as one of plaintiff's attorneys; Messrs. McGowan & Clark appearing as attorneys for Geo. M. Smith and Roy Rutherford, defendants; and Cecil H. Clegg, appearing as attorney for defendant, J. A. Healy, when the following proceedings were had and testimony was taken:

JACK IRVINE being first duly sworn as a witness on behalf of the plaintiff, testified as follows:

DIRECT.

BY MR. PRATT:

Q. What is that (handing paper to witness)?

A. That is the assignment.

Q. The names that appear down here are James Fox, Donald Hayes, Henry Berks, John Sully, John Wensel and Tom King. Are those the same individuals whose lien claims are included in your suit here? A. They are.

Q. When was that assignment delivered to you

and executed?

(Objection).

A. Shortly after the liens were filed.

Q. With reference to the filing of your suit, when was that delivered to you?

A. It was before the suit was started.

Q. It speaks of the Pioneer Quartz Mining Claim at the head of Fairbanks Creek. In what precinct is that claim that is here referred to?

(Objected to by defendant).

Q. That is the Pioneer Claim mentioned in your complaint? A. Yes

MR. PRATT: I offer this assignment."

Whereupon said paper was offered and received in evidence and marked "Plaintiff's Exhibit "I", and was in words and figures as follows:

"For value received, I hereby assign and sell to Jack Irvine, my claim against Angus McDougall for work and labor performed upon the Pioneer Quartz Mining Claim at the head of Fairbanks creek and also any and all rights which I may have by virtue of having filed a mechanic's lien for said amount upon said claim.

JAMES FOX
DONALD HAYES
JOHN WENSEL
JOHN H. SULLY
HENRY BERKS
TOM KING "

Q. You are the owner of those claims therein as-

signed, are you, Mr. Irvine? A. Yes sir."

JAMES FOX being first duly sworn as a witness on behalf of plaintiff testified as follows, to-wit:

CROSS-EXAMINATION.

BY MR. CLEGG:

Q. Mr Fox, Mr. Pratt showed you your claim of lien here — A. Yes.

Q. —Signed James Fox on the 20th day of May, 1913, sworn to before Harry E. Pratt. Do you remember that occasion? A. Yes.

Q. Was that signed and sworn to on the day it bears date? A. I think so.

Q. Did you sign this assignment to Irvine at the same time? A. I think I did.

Q. Your name is the first one there,—James Fox? A. Yes.

Q. That was done the very same day, was it?

A. I wouldn't be certain of it, but I think it was.

Q. You don't remember of going there upon two occasions and signing two different papers?

A. No. I don't.

DONALD HAYES, witness for plaintiff, duly sworn, testified.

CROSS-EXAMINATION

BY MR. CLEGG:

Q. At the time you signed this mechanic's lien which is filed and which Mr. Pratt just showed to you there, that was dated on the 20th of May. Was that signed on that date—your lien claim, was that signed on the date it bears?

A. I don't know.

Q. Did you sign and swear to it on the 20th day of May?

A. I don't recollect what date it was. I didn't make a note of it at the time.

Q. That is the day yours is dated, and I presume that is the date it was signed. A. Yes.

Q. That is your signature? A. Yes..

Q. You assigned this claim to Irvine, did you?

A. Yes sir.

Q. That is your signature on there. Did you sign that? A. That is my name.

Q. Donald Hayes? A. Yes.

Q. When did you sign that, the same day?

A. It was the 20th day of May, the same day.

MR. CLEGG: That is all.

(REDIRECT)

BY MR. PRATT:

Q. You signed the assignment at the same time you signed your lien claim, Mr. Hayes? A. Yes.

Q. Do you remember what your instructions were as to when the assignment should be delivered to Irvine?

(Objected to by defendant as immaterial. Overruled: exception).

Q. Do you remember what you told me as to when I was to deliver that assignment?

A. To Mr. Irvine?

Q. Yes. (Same objection and same ruling, and exception).

A. Yes. I remember.

Q. What were your instructions, that is, with reference to the time of filing the mechanics lien, with reference to that point?

A. I remember instructing you to give that to Mr. Irvine; that I assigned my claim to Mr. Irvine.

Q. And he was going to handle it for you all the way through? A. Yes.

TOM KING, witness for plaintiff, duly sworn, testified.

CROSS-EXAMINATION.

BY MR. CLEGG:

Q. Can you remember when you signed it (King's claim of Lien) with reference to the date?

A. I don't know, but it was in May.

Q. 28th of May I suppose?

A. It was sometime in May, but as to the date I wouldn't swear to it.

Q. You signed this other paper assigning your claim to Jack Irvine at the same time. A. No sir.

Q. When. A. Later.

Q. How long?

A. It was quite a while afterwards.

Q. About how long.

A. This here? (Assignment).

Q. Yes. A. I signed that today.

MR. PRATT:

Q. At the time you made out your claim, what was the understanding as to what you were going to do with the claim and who was going to bring the

suit?

'(Defendants object as irrelevant and immaterial. Overruled. Defendants except; exception allowed).

A. It was to turn it Jack Irvine for to get our pay out of the claim.

Q. After the filing of the lien you were to assign it to Jack to bring the suit.

A. Yes.. And I left immediately from here and went up the river.

DIRECT.

MR. PRATT:

Now, in regard to those assignments, most of them were signed on the same day that the lien claims were signed, with instructions that I was to hold the same, and deliver it to Jack Irvine after the filing of the liens and before the commencement of the suit; and Mr. King also orally assigned the claim to take effect as soon as the lien was filed, but, through an oversight, he didn't sign it until today.

MR. CLEGG: Q. Mr. Pratt, you have had that assignment in your possession ever since the time it was signed, have you. A. Yes.

MR. PRATT: I might say about that assignment: After the liens were all filed. I told Jack that I had the assignment here and I turned it over to him formally, but I kept it in my possession; I told him I turned it over to him, and we would bring the suit, and we did."

Thereafter and upon the 15th day of October, 1915, plaintiff submitted to the Court, his proposed

findings of fact and conclusions of law, which were in words and figures, as follows:

[Title of Court and Cause.]

**Plaintiff's Proposed Findings of Fact and Conclusions
of Law.**

This cause came on for trial before the Court in open session upon the 21st day of May, 1915, upon the amended complaint of plaintiff as further amended by interlineation; the answer of the defendant J. A. Healy, and the answer of the defendants Geo. M. Smith and Roy Rutherford; the plaintiff appeared in person and by Harry E. Pratt, one of his attorneys; the defendant J. A. Healy, appeared by his attorney, Cecil H. Clegg; and the defendants, Geo. M. Smith and Roy Rutherford, appeared by John A. Clark, one of their attorneys. The plaintiff introduced evidence in support of his case but the appearing defendants declined to introduce any so at the close of the case, the Court took the same under advisement and upon the 1st day of June, 1915, announced his decision, which was and is, as follows, to-wit:

FINDINGS OF FACT

1—That the defendant, Angus McDougall was, at Valdez, Alaska, upon the 17th day of October, 1913, duly and regularly personally served with summons in this cause and was upon the 19th day of January, 1914, again duly and regularly served with summons in this cause, together with a copy of the amended

complaint herein: That said defendant, Angus McDougall, made no appearance of any kind and upon the 17th day of May, 1915, his default herein was duly and regularly entered.

2—That the defendant, Angus McDougall, for all times mentioned herein, was one of the owners in common of that certain quartz mining claim in the Fairbanks Precinct, Fourth Judicial Division, Territory of Alaska, known as the Pioneer Quartz Mining claim, situate at the head of Fairbanks creek on the left limit thereof, on the divide between said creek and Wolf creek; That during said period, said Angus McDougall was also the owner of that certain leasehold interest in and to said claim made in writing upon the 25th day of May, 1912, by Angus McDonald, Michael Hyland, Thomas A. McGowan and John A. Clark, the owners thereof, to Angus McDougall, wherein said claim was leased to said Angus McDougall for mining purposes for the period of ten years from June 1st, 1912, reserving to said owners, in payment for said lease, no rent for the first year thereof, but ten per cent of the gross output thereof for the second and third years and fifteen per cent for the remaining years thereof, which said lease was filed for record in the office of the Commissioner and Exofficio Recorder of the Fairbanks Precinct, Territory of Alaska, upon the 2nd day of September, 1912 and recorded therein in Book No. 5 of Leases, page 337 and numbered instrument No. 37027.

3—That upon the 3rd day of February, 1913, the

defendant, Angus McDougall hired plaintiff, Jack Irvine to work upon the aforesaid claim, as a miner, at the rate of Five and 50-100 Dollars (\$5.50) per day and One Dollar (\$1.00) per hour for over-time; That pursuant to said hiring, plaintiff—between said day and the 12th day of May, 1913, the same being the last day he worked thereon—worked upon said claim Ninety-four (94) days and One Hundred and Ninety-seven (197) hours over-time, at no time ceasing work thereon for a period as long as thirty days; That the plaintiff has been paid nothing for said work and there is due and owing him from said defendant, Angus McDougall therefor, the sum of Seven Hundred and Fourteen Dollars (\$714.00), over and above all counterclaims, credits and set-offs, with interest thereon at eight per cent per annum from May 20, 1913; that all of the above mentioned work of plaintiff was development work and the same did, in fact develop and improve said mining claim and leasehold interest.

4—That upon the 7th day of June, 1913, plaintiff filed in the office of the Recorder of the Fairbanks Precinct, Territory of Alaska, a statement sworn to by himself, containing the names of the owners of said claim and leasehold interest, the name of the person who hired him to work thereon, and the contract of said hiring, a statement of his aforesaid demand, after deducting all just credits and set-offs; a description of said mining claim and leasehold interest, sufficient for identification and claiming a

Mechanic's Lien upon said claim and leasehold interest for the aforesaid amount, and interest, and describing his said development work.

5—That plaintiff was compelled to and did pay for the filing of said lien claim, the sum of Two and 25-100 Dollars (\$2.25), and was compelled to employ an attorney to foreclose his said lien. That a reasonable attorney's fee for the foreclosure of said lien is the sum of One Hundred and Forty-three Dollars (\$143.00).

6—That the said J. A. Healy, in an action in this Court, numbered herein 1907, and entitled J. A. Healy, plaintiff against Angus McDougall, Defendant, caused a writ of attachment to issue therein and upon the 13th day of May, 1913, levied the same upon the aforesaid mining claim.

7—That upon the 3rd day of June, 1913, said Angus McDougall made an assignment of the aforesaid claim and leasehold interest, among other property and subject to certain conditions to the defendants George M. Smith and Roy Rutherford, for the benefit of his creditors, which said assignment was filed for record upon the 18th day of June, 1913, and is recorded in the office of the Recorder of the Fairbanks Precinct, Territory of Alaska in Volume 17 of Deeds page 449, Instrument No. 39019.

8—That upon the 18th day of January, 1913, the defendant, Angus McDougall hired James Fox to work upon the aforesaid claim, as a miner, at the rate of Five Dollars (\$5.00) per day and One Dollar

(\$1.00) per hour for overtime; That pursuant to said hiring, James Fox—between said day and the 11th day of May, 1913, the same being the last day he worked thereon—worked upon said claim One Hundred and Ten (110) days and One Hundred and twenty-five (125) hours over-time, at no time ceasing work thereon for a period as long as thirty days; that James Fox was paid nothing for said work and there was due and owing from said defendant, Angus McDougall therefor, the sum of Six Hundred and Seventy-Five Dollars (\$675.00), over and above all counterclaims, credits and off-sets, with interest thereon at eight per cent per annum from May 20, 1913; that all of the above mentioned work of James Fox was development work and the same did, in fact, develop and improve said mining claim and leasehold interest.

9—That upon the 2nd day of June, 1913, James Fox filed in the office of the Recorder of the Fairbanks, Precinct, Territory of Alaska, a statement sworn to by himself, containing the names of the owners of said claim and leasehold interest, the name of the person who hired him to work thereon, and the contract of said hiring; a statement of his aforesaid demand, after deducting all just credits and set-offs; a description of said mining claim and leasehold interest, sufficient for identification and claiming a Mechanic's Lien upon said claim and leasehold interest for the aforesaid amount, and interest, and describing his said development work.

10—That the cost of filing said lien claim of James Fox was the sum of Two and 25-100 Dollars (\$2.25) and a reasonable attorney's fee for the foreclosure of said lien is the sum of One Hundred and Thirty-five Dollars (\$135.00).

11—That upon the 18th day of January, 1913, the defendant, Angus McDougall hired Donald Hayes to work upon the aforesaid claim, as a miner, at the rate of Five and 50-100 Dollars (\$5.50) per day; That pursuant to said hiring, Donald Hayes—between said day and the 12th day of May, 1913, the same being the last day he worked thereon—worked upon said claim One Hundred and Six and one-half (106 1-2) days, at no time ceasing work thereon for a period as long as thirty days; That Donald Hayes was paid nothing for said work and there was due and owing from said defendant, Angus McDougall therefor, the sum of Five Hundred Eighty-five and 75-100 Dollars (\$585.75), over and above all counter-claims, credits and set-offs, with interest thereon at eight per cent per annum from May 20, 1913; that all of the above mentioned work of Donald Hayes was development work and the same did, in fact, develop and improve said mining claim and leasehold interest.

12—That upon the 2nd day of June, 1913, Donald Hayes filed in the office of the Recorder of the Fairbanks Precinct, Territory of Alaska, a statement sworn to by himself, containing the names of the owners of said claim and leasehold interest, the name

of the person who hired him to work thereon, and the contract of said hiring; a statement of his aforesaid demand, after deducting all just credits and set-offs; a description of said mining claim and leasehold interest sufficient for identification and claiming a Mechanic's Lien upon said claim and leasehold interest for the aforesaid amount, and interest, and describing his said development work.

13.—That the cost of filing said lien claim of Donald Hayes was the sum of Two and 25-100 Dollars (\$2.25) and a reasonable attorney's fee for the foreclosure of said lien is the sum of One Hundred and Seventeen Dollars (\$117.00).

14.—That upon the 9th day of December, 1912, the defendant, Angus McDougall hired John Wensel to work upon the aforesaid claim, at the rate of Five Dollars '(\$5.00) per day; That pursuant to said hiring, John Wensel—between said day and the 12th day of May, 1913, the same being the last day he worked thereon—worked upon said claim One Hundred and Twenty-six and a half (126 1-2) days; That there has been paid John Wensel for said work the sum of Fourteen Dollars (\$14.00) and no more, and there is due and owing from said defendant, Angus McDougall therefor, the sum of Six Hundred and Twenty-three and 50-100 Dollars (\$623.50), over and above all counterclaims, credits and set-offs, with interest thereon at eight per cent per annum from May 20, 1913; That all of the above mentioned work of John Wensel, consisted of cooking for the men

who were doing development work upon said claim and it was necessary for said men to have a cook in order that their services should not be taken from development work to cook their own meals.

15—That upon the 27th day of May, 1913, John Wensel filed in the office of the Recorder of the Fairbanks Precinct, Territory of Alaska, a statement sworn to by himself, containing the names of the owners of said claim and leasehold interest, the name of the person who hired him to work thereon, and the contract of said hiring, a statement of his aforesaid demand, after deducting all just credits and set-offs; a description of said mining claim and leasehold interest, sufficient for identification and claiming a Mechanic's Lien upon said claim and leasehold interest for the aforesaid amount, and interest, and describing the said work.

16—That said John Wensel was compelled to and did pay for the filing of said lien claim, the sum of Two and 25-100 Dollars (\$2.25) and was compelled to employ an attorney to foreclose his said lien. That a reasonable attorney's fee for the foreclosure of said lien is the sum of One Hundred and Twenty-five Dollars (\$125.00).

17—That said John Wensel ceased working upon said claim entirely, for the full month of April, 1913.

18—That upon the 18th day of April, 1913, the defendant, Angus McDougall hired John Sully to work upon the aforesaid claim, at the rate of One and 50-100 Dollars (\$1.50) an hour; That pursuant to

said hiring, John Sully—between said day and the 5th day of May, 1913, the same being the last day he worked thereon—worked upon said claim One Hundred and Seventy-eight (178) hours; That John Sully has been paid nothing for said work and there is due and owing from said defendant, Angus McDougall therefore, the sum of Two Hundred and Sixty-seven Dollars (\$267.00), over and above all counterclaims, credits and set-offs, with interest thereon at eight per cent per annum from May 20th, 1913; that all of the above mentioned work of John Sully was development work and the same did, in fact, develop and improve said mining claim and leasehold interest.

19—That upon the 27th day of May, 1913, John Sully filed in the office of the Recorder of the Fairbanks Precinct, Territory of Alaska, a statement sworn to by himself, containing the names of the owners of said claim and leasehold interest, the name of the person who hired him to work thereon, and the contract of said hiring, a statement of his aforesaid demand, after deducting all just credits and set-offs; a description of said mining claim and leasehold interest, sufficient for identification and claiming a Mechanic's Lien upon said claim and leasehold interest for the aforesaid amount, and interest, and describing his said development work. .

20—That John Sully was compelled to and did pay for the filing of said lien claim, the sum of Two and 25-100 Dollars '(\$2.25), and was compelled to employ

an attorney to foreclose his said lien. That a reasonable attorney's fee for the foreclosure of said lien is the sum of Fifty-four Dollars (\$54.00).

21—That upon the 9th day of April, 1913, the defendant, Angus McDougall hired Tom King, to work upon the aforesaid claim, as a miner, at the rate of Five Dollars '(\$5) per day; That pursuant to said hiring Tom King—between said day and the 12th day of May, 1913, the same being the last day he worked thereon—worked upon said claim Thirty-three (33) days; That Tom King has been paid nothing for said work and there is due and owing from said defendant, Angus McDougall therefor, the sum of One Hundred and Sixty-five Dollars (\$165.00), over and above all counterclaims, credits and set-offs, with interest thereon at eight per cent per annum from May 30, 1913; that all of the above mentioned work of Tom King was development work and the same did, in fact, develop and improve said mining claim and leasehold interest.

22—That upon the 28th day of May, 1913, Tom King filed in the office of the Recorder of the Fairbanks Precinct, Territory of Alaska, a statement sworn to by himself, containing the names of the owners of said claim and leasehold interest, the name of the person who hired him to work thereon, and the contract of hiring, a statement of his aforesaid demand, after deducting all just credits and set-offs; a description of said mining claim and leasehold interest, sufficient for identification and claiming a

Mechanic's Lien upon said claim and leasehold interest for the aforesaid amount, and interest, and describing his said development work.

23—That Tom King was compelled to and did pay for the filing of said lien claim, the sum of Two and 25-100 Dollars (\$2.25), and was compelled to employ an attorney to foreclose his said lien. That a reasonable attorney's fee for the foreclosure of said lien is the sum of Thirty-three dollars (\$33.00).

24—That upon the 28th day of December, 1912, the defendant, Angus McDougall, hired Henry Berks to work upon the aforesaid claim, as a miner, at the rate of Five and 50-100 Dollars (\$5.50) per day; That pursuant to said hiring, Henry Berks—between said day and the 12th day of May, 1913, the same being the last day he worked thereon—worked upon said claim One Hundred and Twenty-three and a half (123 1-2) days, at no time ceasing work thereon for a period as long as thirty days; That Henry Berks has been paid nothing for said work and there is due and owing from said defendant, Angus McDougall therefor, the sum of Six Hundred and Seventy-nine and 25-100 Dollars (\$679.25), over and above all counterclaims, credits and set-offs, with interest thereon at eight per cent per annum from May 20th, 1913; that all of the above mentioned work of Henry Berks was development work and the same did, in fact, develop and improve said mining claim and leasehold interest.

25—That upon the 7th day of June, 1913, Henry

Berks filed in the office of the Recorder of the Fairbanks Precinct, Territory of Alaska, a statement sworn to by himself, containing the names of the owners of said claim and leasehold interest, the name of the person who hired him to work thereon, and the contract of hiring, a statement of his aforesaid demand, after deducting all just credits and set-offs; a description of said mining claim and leasehold interest, sufficient for identification and claiming a Mechanic's Lien upon said claim and leasehold interest for the aforesaid amount, and interest, and describing his said development work.

26—That Henry Berks was compelled to and did pay for the filing of said lien claim, the sum of Two and 25-100 Dollars '(\$2.25), and was compelled to employ an attorney to foreclose his said lien. That a reasonable attorney's fee for the foreclosure of said lien is the sum of One Hundred and Thirty-six Dollars (\$136.00).

27—That the aforesaid James Fox, Donald Hayes, John Sully and Henry Berks, had good and valid mechanic's liens upon the aforesaid interests of Angus McDougall, upon the filing of the aforesaid lien claims and after the filing of the same and before the commencement of this suit, sold and assigned the said claims and their rights by reason of having filed said mechanic's liens, to the plaintiff, Jack Irvine, who was the owner thereof at the commencement of this suit and is still the owner thereof.

28—That the aforesaid Tom King had a good and

valid mechanic's lien upon the aforesaid interests of Angus McDougall, after he had filed his aforesaid claim and after the filing the same and before the commencement of this suit, sold and assigned the said claim against Angus McDougall, and his rights, by reason of having a mechanic's lien thereon, to the plaintiff, Jack Irvine, who was the owner and holder thereof at the time of the commencement of this suit and still is such owner.

CONCLUSIONS OF LAW.

1—That the plaintiff, Jack Irvine, has a good and valid mechanic's lien upon the interests of Angus McDougall in and to said mining claim and leasehold interest to the extent that such interests existed upon the 3rd day of February, 1913, for the sum of Seven Hundred and Fourteen Dollars (\$714.00), with interest thereon from May 20, 1913, at eight per cent per annum; for the further sum of Two and 25-100 Dollars (\$2.25), expense of filing his said lien statement; for the further sum of One Hundred and Forty-three Dollars (\$143.00) as attorney's fee for the foreclosure of said lien and for the costs and disbursements of this suit.

2—That said Jack Irvine is entitled to a judgment against the said Angus McDougall for the above mentioned amounts and for the judgment foreclosing said mechanic's lien upon said claim and leasehold interest and ordering the proceeds of said sale applied to the payment of said judgment. .

3—That at the time John Wensel ceased working

upon said claim, to-wit: May 12, 1913, he had no right to a mechanic's lien upon said claim by reason of having ceased work thereon for a period of thirty days.

4—That the aforesaid lien claims of James Fox, Donald Hayes, John Sully, Tom King and Henry Berks, were good and valid mechanic's liens upon the aforesaid interests of the defendant, Angus McDougall, as said interest existed upon the 5th day of May, 1915, and the plaintiff, Jack Irvine, is entitled to a judgment against the defendant, Angus McDougall, upon the said claims, as follows:

Upon the claim of James Fox, for Six Hundred and Seventy-Five Dollars (\$675.00) with interest at eight per cent per annum from May 20, 1913; Two and 25-100 Dollars (\$2.25) filing fee; One Hundred Thirty-five Dollars (\$135.00) Attorney's fee:

Upon the claim of Donald Hayes, for Five Hundred Eighty-Five and 75-100 Dollars (\$585.75), with interest at eight per cent per annum from May 20, 1913; Two and 25-100 Dollars (\$2.25), filing fee; One Hundred and Seventeen Dollars '(\$117.00), attorney's fee:

Upon the claim of John Sully, for Two Hundred and Sixty-seven Dollars (\$267.00), with interest at eight per cent per annum from May 20, 1913; Two and 25-100 Dollars (\$2.25) filing fee; Fifty-four Dollars (\$54.00), attorney's fee:

Upon the claim of Tom King, for One Hundred and Sixty-five Dollars (\$165.00), with interest at

eight per cent per annum from May 20th, 1913; Two and 25-100 Dollars (\$2.25) filing fee; Thirty-three Dollars (\$33.00), attorney's fee:

Upon the claim of Henry Berks, for Six Hundred and Seventy-nine and 25-100 Dollars (\$679.25), with interest at eight per cent per annum from May 20th, 1913; Two and 25-100 Dollars (\$2.25) filing fee; One Hundred and Thirty-six Dollars '(\$136.00), attorney's fee:

And for a judgment foreclosing said liens, and each of them, and ordering the sale of said property to satisfy the aforesaid sums.

5—That the aforesaid lien claims of Jack Irvine, James Fox, Donald Hayes, John Sully, Tom King and Henry Berks, are first liens upon the said interests of said Angus McDougall, and are superior to any right, title, interest, lien or claim of the defendants, J. A. Healy, Roy Rutherford and Geo. M. Smith.

DATED at Fairbanks, Alaska, this——day of October, 1915.

JUDGE.

Endorsed: Service of a copy of the within Plaintiff's Proposed Findings of Fact and Conclusions of Law is hereby admitted this 15th day of October, 1915.

CECIL H. CLEGG,

Atty. for Defendant J. A. Healy.

McGOWAN & CLARK,

Attys. for Defendants, Geo. M. Smith
and Roy Rutherford.

Filed in the District Court, Territory of Alaska, 4th Div., Oct. 15, 1915. J. E. Clark, Clerk, By L. F. Protzman, Deputy.

That upon the 28th day of October, 1915, the Court refused to sign said proposed findings of fact and conclusions of law to which refusal plaintiff then and there excepted. That upon the 20th day of October, 1915, plaintiff filed objections to the findings of fact and conclusions of law prepared consonant to the Courts decision in this case, and thereafter, on the 29th day of October, 1915 signed by the Court which said objections were in words and figures as follows:

[Title of Court and Cause.]

Objections to Findings of Fact and Conclusions of Law.

Comes now the above plaintiff, and referring to the Findings of Fact and Conclusions of Law prepared herein in consonance with the Court's decision of June 1st, 1915 and said findings and said conclusions are on file herein for the Courts signature, objects to findings of fact Nos. 28 and 29, for the reason that the same are contrary to the law and the evidence in this case.

Plaintiff further objects to Conclusions of Law No. 6, for the reason (a)—that said conclusion is based upon the erroneous state of facts, and (b)—that the said conclusion is not law, even if that alleged finding of fact upon which it is based were shown by

the evidence.

Plaintiff further objects to Conclusion of Law No. 7 for the reason that the same is based upon an erroneous Finding of Fact.

DATED at Fairbanks, Alaska, this 20th day of October, 1915.

HARRY E. PRATT

LOUIS K. PRATT

Attys. for Plaintiff.

Upon the 27th day of October, 1915, the Court overruled said objections, to which ruling plaintiff then and there excepted. Such exceptions were allowed.

Upon the 29th day of October, 1915, the Court signed and filed findings of fact and conclusions of law on file in this case. To the making and signing of which, the plaintiff, then and there, duly excepted for the reason that the findings of fact Nos. twenty-eight and twenty-nine, and conclusions of law, Nos. six and seven, were contrary to the law and the evidence in this case and the Court then and there allowed such exceptions.

That upon the 31st day of October, 1915, plaintiff filed herein his motion for a new trial which said motion was in words and figures, as follows:

[Title of Court and Cause.]

Motion for New Trial.

Comes now the above named plaintiff, and moves the Court for an order setting aside the findings of

fact and conclusions of law made and signed by this Court in the above entitled case, upon the 29th day of October, 1915, and for an order granting a new trial in this case, for the following reasons, to-wit:

1—That finding of fact number twenty-eight in the aforementioned findings of fact and conclusions of law is contrary and against the law and evidence adduced at the trial of this case.

2—That the portion of finding of fact number twenty-nine of the aforesaid findings which reads as follows, to-wit:

“29—That the aforesaid Tom King sold and assigned his said claim to the plaintiff, Jack Irvine, long after the commencement of this suit and the said Jack Irvine was not the owner and holder of said claim at the time of the commencement of this suit,”

is contrary and against the law and evidence adduced in the trial of this case and the evidence upon said trial was insufficient to warrant said finding number twenty-eight and the aforesaid portion of finding number twenty-nine.

3—That conclusion of law number six in the aforesaid findings of fact and conclusions of law, is contrary and against the law and evidence adduced upon the trial of this case and said evidence was insufficient to justify said finding.

4—That that portion of conclusion of law number seven of the aforesaid findings of fact and conclusions of law, which reads as follows, to-wit:

"But plaintiff was not the assignee and owner of said lien claim of Tom King nor the debts secured thereby at the time of the commencement of this suit and therefore is not entitled to any judgment thereon,"

is contrary and against the evidence adduced upon the trial of this case and contrary to the law governing the same.

DATED at Fairbanks, Alaska, this 30th day of October, 1915.

HARRY E. PRATT

LOUIS K. PRATT

Attorneys for Plaintiff.

That thereafter and upon the 2nd day of November, 1915, said motion was submitted to the Court for its decision and by the Court, upon the 4th day of November, 1915, denied to which said denial the plaintiff then and there excepted and an exception was duly allowed. That thereafter and upon the 9th day of November, 1915, the Court made and filed his judgment and decree herein, to which said making and filing the plaintiff then and there excepted for the reason that the portions of said judgment and decree, which were in words and figures, as follows, to-wit:

"IT IS FURTHER ADJUDGED and DECREED that the aforesaid assigned claims of James Fox, Donald Hayes, John Wenzel, John Sully and Henry Berks, set forth in the second, third, fourth, fifth and seventh causes of action

respectively, of plaintiff's amended complaint as further amended by interlineation, did not constitute valid liens and that the plaintiff shall take nothing thereby.

IT IS FURTHER ADJUDGED and DECREED that plaintiff take nothing by virtue of the assigned claim of Tom King set forth in the sixth cause of action of Plaintiff's amended complaint as further amended by interlineation."

are contrary to the law and evidence of this case, which said exceptions were by the Court duly allowed.

And now, the foregoing matters composing all of the testimony adduced at said trial, bearing directly or indirectly on the question of the assignment or the non-assignment of the claims of James Fox, Donald Hayes, John Sully, Henry Berks and Tom King, as set forth in plaintiff's amended complaint, as amended by interlineation in causes of action numbers two, three five, six and seven thereof, respectively, and in furtherance of justice and in order that the foregoing exceptions may become a part of the records of this case, and within the time allowed by law to prepare, serve, file, and have settled his bill of exceptions of this cause, the plaintiff herewith presents the foregoing bill of exceptions in the above entitled cause.

WHEREFORE plaintiff prays that the Court adjudge that the above and foregoing, constitutes in substance all of the evidence adduced upon the trial of this case in regard to the assignment or non-as-

signment of the aforesaid claims, and that the above and forgoing be settled, signed and allowed by the Judge of this Court in the manner prescribed by law, and made a part of the record of this case.

DATED at Fairbanks, Alaska, this 9th day of November, 1915.

HARRY E. PRATT

LOUIS K. PRATT

Attorneys for Plaintiff.

SERVICE of the foregoing bill of exceptions duly executed this 9th day of November, 1915.

CECIL H. CLEGG,

Atty, for Defendant J. A. Healy.

McGOWAN and CLARK,

Attys. for Defendants Geo. M. Smith
and Roy Rutherford.

Endorsed: Filed in the District Court, Territory of Alaska, 4th Div. Nov. 9, 1915. J. E. Clark, Clerk, by Sidney Stewart, Deputy.

Re-Filed in the District Court, Territory of Alaska, 4th Div. Nov. 18, 1915. J. E. Clark, Clerk, by Sidney Stewart, Deputy.

[Title of Court and Cause.]

Order Settling Bill of Exceptions.

BE IT REMEMBERED that on the 17th day of November, 1915, the above named plaintiff, Jack Irvine, presented his bill of exceptions to the above entitled Court for allowance and settlement, which said proposed bill of exceptions was served and filed

within the time allowed by law and which said bill of exceptions consists of the foregoing typewritten pages, numbered one to sixteen, inclusive.

Plaintiff appeared by Harry E. Pratt, one of his attorneys. Defendant J. A. Healy appeared by his attorney, Cecil H. Clegg; and defendants Geo. M. Smith and Roy Rutherford appeared by one of their attorneys, John A. Clark. It appears to the Court that the above appearing defendants have heretofore filed objections to said proposed bill of exceptions and suggested amendments thereto, and that a full hearing has been had upon said objections and proposed amendments.

Now upon this 18th day of November, 1915, it appearing to the Court that the aforesaid bill of exceptions has been made to conform to such of said objections as were sustained and that it contains all of the testimony, exhibits and evidence given by the respective parties upon the trial of this cause, pertaining to, material, or bearing upon the assignment or non-assignment of the claims of James Fox, Donald Hayes, John Sully, Tom King and Henry Berks, set forth in plaintiff's amended complaint, as further amended by interlineation in causes of action, two, three, five, six and seven, respectively, and all matters upon which the Court based his findings of fact with reference thereto; and

IT FURTHER APPEARING to the Court that all matters set forth in said bill of exceptions are, in all respects true and correct.

NOW THEREFORE IT IS HEREBY ORDERED & ADJUDGED that the foregoing typewritten pages, numbered one to sixteen, inclusive, be and the same are hereby approved, allowed and settled as the bill of exceptions in the above entitled matter and made to appear of record therein, and ordered filed as of this date:

IT IS FURTHER ORDERED AND ADJUDGED that the foregoing bill of exceptions contains all of the testimony, evidence, exhibits and proceedings had upon the trial of this cause with reference to the assignment or non-assignment of the claim of the aforesaid James Fox, Donald Hayes, John Sully, Tom King and Henry Berks, set forth in plaintiff's amended complaint as further amended by interlineation in causes of action two, three, five, six and seven, respectively, and all matters upon which findings of fact number twenty-eight, conclusion of law number six, and those portions of finding of fact number twenty-nine, and conclusion number seven, objected to by plaintiff in this Court's findings of fact and conclusions of law and that said bill contains all matters necessary for an intelligent determination of the correctness of this Court's decision with reference to said assignments.

That the further matters set forth in said bill of exceptions are true and correct and that whenever an exception is therein noted by plaintiff, to any rulings of said Court, an exception was then and there duly allowed by the Court.

DATED at Fairbanks, Alaska, this 18th day of November, 1915.

CHARLES E. BUNNELL,

District Judge.

Entered in Court Journal No. 13, page 360.

Endorsed: Filed in the District Court, Territory of Alaska, 4th Div., Nov. 18, 1915. J. E. Clark, Clerk, by Sidney Stewart, Deputy.

[Title of Court and Cause.]

Findings of Fact and Conclusions of Law.

This cause came on for trial before the Court in open session upon the 21st day of May, 1915, upon the amended complaint of plaintiff as further amended by interlineation; the answer of the defendant J. A. Healy, and the answer of the defendants Geo. M. Smith and Roy Rutherford; the plaintiff appeared in person and by Harry E. Pratt, one of his attorneys; the defendant J. A. Healy, appeared by his attorney, Cecil H. Clegg; and the defendants, Geo. M. Smith and Roy Rutherford, appeared by John A. Clark, one of their attorneys. The plaintiff introduced evidence in support of his case but the appearing defendants declined to introduce any so at the close of the case, the Court took the same under advisement and upon the 1st day of June, 1915, announced his decision, which was and is, as follows, to-wit:

FINDINGS OF FACT.

1—That the defendant, Angus McDougall was, at

Valdez, Alaska, upon the 17th day of October, 1913, duly and regualrly personally served with summons in this cause and was upon the 19th day of January, 1914, again duly and regularly served with summons in this cause, together with a copy of the amended complaint herein; That said defendant, Angus McDougall, made no appearance of any kind and upon the 17th day of May, 1915, his default herein was duly and regularly entered.

2—That the defendant, Angus McDougall, for all times mentioned herein, was one of the owners in common of that certain quartz mining claim in the Fairbanks Precinct, Fourth Judicial Division, Territory of Alaska, known as the Pioneer Quartz Mining claim, situate at the head of Fairbanks creek on the left limit thereof, on the divide between said creek and Wolf creek; That during said period, said Angus McDougall was also the owner of that certain leasehold interest in and to said claim made in writing upon the 25th day of May, 1912, by Angus McDougall, Michael Hyland, Thomas A. McGowan and John A. Clark, the owners thereof, to Angus McDougall, wherein said claim was leased to said Angus McDougall for mining purposes for the period of ten years from June 1st, 1912, reserving to said owners, in payment for said lease, no rent for the first year thereof, but ten per cent of the gross output thereof for the second and third years and fifteen per cent for the remaining years thereof, which said lease was filed for record in the office of the

Commissioner and Exofficio Recorder of the Fairbanks Precinct, Territory of Alaska, upon the 2nd day of September, 1912 and recorded in Book No. 5 of Leases, page 337 and numbered instrument No. 37027.

3—That upon the 3rd day of February, 1913, the defendant, Angus McDougall hired plaintiff, Jack Irvine, to work upon the aforesaid claim, as a miner, at the rate of Five and 50-100 Dollars (\$5.50) per day and One Dollar (\$1.00) per hour for over-time; That pursuant to said hiring, plaintiff—between said day and the 12th day of May, 1913, the same being the last day he worked thereon—worked upon said claim Ninety-four (94) days and One Hundred and Ninety-seven (197) hours over-time, at no time ceasing work thereon for a period as long as thirty days; That the plaintiff has been paid nothing for said work and there is due and owing him from said defendant, Angus McDougall therefor, the sum of Seven Hundred and Fourteen Dollars (\$714.00). over and above all counterclaims, credits and set-offs, with interest thereon at eight per cent per annum from May 20, 1913; that all of the above mentioned work of plaintiff was development work and the same did, in fact develop and improve said mining claim and leasehold interest.

4—That upon the 7th day of June, 1913, plaintiff filed in the office of the Recorder of the Fairbanks Precinct, Territory of Alaska, a statement sworn to by himself, containing the names of the owners of

said claim and leasehold interest, the name of the person who hired him to work thereon, and the contract of said hiring, a statement of his aforesaid demand, after deducting all just credits and set-offs; a description of said mining claim and leasehold interest, sufficient for identification and claiming a Mechanic's Lien upon said claim and leasehold interest for the aforesaid amount, and interest, and describing his said development work.

5—That plaintiff was compelled to and did pay for the filing of said lien claim, the sum of Two and 25-100 Dollars (\$2.25), and was compelled to employ an attorney to foreclose his said lien. That a reasonable attorney's fee for the foreclosure of said lien is the sum of One Hundred and Forty-three Dollars (\$143.00).

6—That the said J. A. Healy, in an action in this Court, numbered herein 1907, and entitled J. A. Healy, plaintiff against Angus McDougall, Defendant, caused a writ of attachment to issue therein and upon the 13th day of May, 1913, levied the same upon the aforesaid mining claim.

7—That upon the 3rd day of June, 1913, said Angus McDougall made an assignment of the aforesaid claim and leasehold interest, among other property and subject to certain conditions to the defendants George M. Smith and Roy Rutherford, for the benefit of his creditors, which said assignment was filed for record upon the 18th day of June, 1913, and is recorded in the office of the Recorder of the

Fairbanks Precinct, Territory of Alaska in Volume 17 of Deeds page 449, Instrument No. 39019.

8—That upon the 18th day of January, 1913, the defendant, Angus McDougall hired James Fox to work upon the aforesaid claim, as a miner, at the rate of Five Dollars '(\$5.00) per day and One Dollar (\$1.00) per hour for overtime; That pursuant to said hiring, James Fox—between said day and the 11th day of May, 1913, the same being the last day he worked thereon—worked upon said claim One Hundred and Ten (110) days and One Hundred and twenty-five (125) hours over-time, at no time ceasing work thereon for a period as long as thirty days; That James Fox was paid nothing for said work and there was due and owing from said defendant, Angus McDougall therefor, the sum of Six Hundred and Seventy-Five Dollars (\$675.00), over and above all counterclaims, credits and off-sets, with interest thereon at eight per cent per annum from May 20, 1913; that all of the above mntioned work of James Fox was development work and the same did, in fact, develop and improve said mining claim and leasehold interest.

9—That upon the 2nd day of June, 1913, James Fox filed in the office of the Recorder of the Fairbanks Precinct, Territory of Alaska, a statement sworn to by himself, containing the names of the owners of said claim and leasehold interest, the name of the person who hired him to work thereon, and the contract for said hiring; a statement of his afore-

said demand, after deducting all just credits and set-offs; a description of said mining claim and leasehold interest, sufficient for identification and claiming a Mechanic's Lien upon said claim and leasehold interest for the aforesaid amount, and interest, and describing his said development work.

10—That the cost of filing said lien claim of James Fox was the sum of Two and 25-100 Dollars (\$2.25).

11—That upon the 18th day of January, 1913, the defendant, Angus McDougall hired Donald Hayes to work upon the aforesaid claim, as a miner, at the rate of Five and 50-100 Dollars (\$5.50) per day; That pursuant to said hiring, Donald Hayes—between said day and the 12th day of May, 1913, the same being the last day he worked thereon—worked upon said claim One Hundred and Six and one-half (106 1-2) days, at no time ceasing work thereon for a period as long as thirty days; That Donald Hayes was paid nothing for said work and there was due and owing from said defendant, Angus McDougall therefor, the sum of Five Hundred Eighty-five and 75-100 Dollars (\$585.75), over and above all counter-claims, credits and set-offs, with interest thereon at eight per cent per annum from May 20, 1913; that all of the above mentioned work of Donald Hayes was development work and the same did, in fact, develop and improve said mining claim and leasehold interest.

12—That upon the 2nd day of June, 1913, Donald Hayes filed in the office of the Recorder of the Fair-

banks Precinct, Territory of Alaska, a statement sworn to by himself, containing the names of the owners of said claim and leasehold interest, the name of the person who hired him to work thereon, and the contract of said hiring; a statement of his aforesaid demand, after deducting all just credits and set-offs; a description of said mining claim and leasehold interest, sufficient for identification and claiming a Mechanic's Lien upon said claim and leasehold interest for the aforesaid amount, and interest, and describing his said development work.

13—That the cost of filing said lien claim of Donald Hayes was the sum of Two and 25-100 Dollars (\$2.25).

14—That upon the 9th day of December, 1912, the defendant, Angus McDougall hired John Wensel to work upon the aforesaid claim, at the rate of Five Dollars (\$5.00) per day; That pursuant to said hiring, John Wensel—between said day and the 12th day of May, 1913, the same being the last day he worked thereon—worked upon said claim One Hundred and Twenty-six and a half (126 1-2) days; That there has been paid John Wensel for said work the sum of Fourteen Dollars (\$14.00) and no more, and there is due and owing from said defendant, Angus McDougall therefor, the sum of Six Hundred and Twenty-three and 50-100 Dollars (\$623.50), over and above all counterclaims, credits and set-offs, with interest thereon at eight per cent per annum from May 20, 1913; That all

of the above mentioned work of John Wensel, consisted of cooking for the men who were doing development work upon said claim and it was necessary for said men to have a cook in order that their services should not be taken from development work to cook their own meals.

15—That upon the 27th day of May, 1913, John Wensel filed in the office of the Recorder of the Fairbanks Precinct, Territory of Alaska, a statement sworn to by himself, containing the names of the owners of said claim and leasehold interest, the name of the person who hired him to work thereon, and the contract of said hiring, a statement of his aforesaid demand, after deducting all just credits and set-offs; a description of said mining claim and leasehold interest, sufficient for identification and claiming a Mechanic's Lien upon said claim and leasehold interest for the aforesaid amount, and interest, and describing his said work.

16—That said John Wensel was compelled to and did pay for the filing of said lien claim, the sum of Two and 25-100 Dollars (\$2.25).

17—That said John Wensel ceased working upon said claim entirely, for the full month of April, 1913.

18—That upon the 18th day of April, 1913, the defendant, Angus McDougall hired John Sully to work upon the aforesaid claim, at the rate of One and 50-100 Dollars (\$1.50) an hour; That pursuant to said hiring, John Sully—between said day and the 5th of May, 1913, the same being the last day

he worked thereon—worked upon said claim One Hundred and Seventy-eight (178) hours; That John Sully has been paid nothing for said work and there is due and owing from said defendant, Angus McDougall therefor, the sum of Two Hundred and Sixty-seven Dollars (\$267.00), over and above all counterclaims, credits and set-offs, with interest thereon at eight per cent per annum from May 20th, 1913; that all of the above mentioned work of John Sully was development work and the same did, in fact, develop and improve said mining claim and leasehold interest.

19—That upon the 27th day of May, 1913, John Sully filed in the office of the Recorder of the Fairbanks Precinct, Territory of Alaska, a statement sworn to by himself, containing the names of the owners of said claim and leasehold interest, the name of the person who hired him to work thereon, and the contract of said hiring, a statement of his aforesaid demand, after deducting all just credits and set-offs; a description of said mining claim and leasehold interest, sufficient for identification and claiming a Mechanic's Lien upon said claim and leasehold interest for the aforesaid amount, and interest, and describing his said development work.

20—That John Sully was compelled to and did pay for the filing of said lien claim, the sum of Two and 25-100 Dollars (\$2.25).

21—That upon the 9th day of April, 1913, the defendant, Angus McDougall hired Tom King, to work

upon the aforesaid claim, as a miner, at the rate of Five Dollars (\$5) per day; That pursuant to said hiring, Tom King—between said day and the 12th day of May, 1913, the same being the last day he worked thereon—worked upon said claim Thirty-three (33) days; That Tom King has been paid nothing for said work and there is due and owing from said defendant, Angus McDougall therefor, the sum of One Hundred and Sixty-five Dollars (\$165.00), over and above all counterclaims, credits and set-offs, with interest thereon at eight per cent per annum from May 20, 1913; that all of the above mentioned work of Tom King was development work and the same did, in fact, develop and improve said mining claim and leasehold interest.

22—That upon the 28th day of May, 1913, Tom King filed in the office of the Recorder of the Fairbanks Precinct, Territory of Alaska, a statement sworn to by himself, containing the names of the owners of said claim and leasehold interest, the name of the person who hired him to work thereon, and the contract of hiring, a statement of his aforesaid demand, after deducting all just credits and set-offs; a description of said mining claim and leasehold interest, sufficient for identification and claiming a Mechanic's Lien upon said claim and leasehold interest for the aforesaid amount, and interest, and describing his said development work.

23—That Tom King was compelled to and did pay for the filing of said lien claim, the sum of Two

and 25-100 Dollars (\$2.25).

24—That upon the 28th day of December, 1912, the defendant, Angus McDougall, hired Henry Berks to work upon the aforesaid claim, as a miner, at the rate of Five and 50-100 (\$5.50) per day; That pursuant to said hiring, Henry Berks—between said day and the 12th day of May, 1913, the same being the last day he worked thereon—worked upon said claim One Hundred and Twenty-Three and a half (123 1-2) days, at no time ceasing work thereon for a period as long as thirty days; That Henry Berks has been paid nothing for said work and there is due and owing from said defendant, Angus McDougall therefor, the sum of Six Hundred and Seventy-nine and 25-100 Dollars '(\$679.25), over and above all counterclaims, credits and set-offs, with interest thereon at eight per cent per annum from May 20th, 1913; that all of the above mentioned work of Henry Berks was development work and the same did, in fact, develop and improve said mining claim and leasehold interest.

25—That upon the 7th day of June, 1913, Henry Berks filed in the office of the Recorder of the Fairbanks Precinct, Territory of Alaska, a statement sworn to by himself, containing the names of the owners of said claim and leasehold interest, the name of the person who hired him to work thereon, and the contract of hiring, a statement of his aforesaid demand, after deducting all just credits and set-offs; a description of said mining claim and leasehold in-

terest, sufficient for identification and claiming a Mechanic's Lien upon said claim and leasehold interest for the aforesaid amount, and interest, and describing his said development work.

26—That Henry Berks was compelled to and did pay for the filing of said lien claim the sum of Two and 25-100 Dollars (\$2.25).

27—That the aforesaid James Fox, Donald Hayes, John Wensel, John Sully and Henry Berks, sold and assigned their said claims against Angus McDougall, the defendant, to the plaintiff, Jack Irvine, and who is now the owner thereof and was at the time of the commencement of this suit.

28—That the aforesaid James Fox, Donald Hayes, John Wensel, John Sully and Henry Berks, sold and assigned their aforesaid claims against the said defendant, Angus McDougall to the plaintiff, Jack Irvine, upon the 20th day of May, 1913 and were not the owners of their said claims at the time they filed their lien statements as above mentioned.

29—That the aforesaid Tom King sold and assigned his said claim to the plaintiff, Jack Irvine, long after the commencement of this suit and the said Jack Irvine was not the owner and holder of said claim at the time of the commencement of this suit, although he now is.

CONCLUSIONS OF LAW.

1—That the plaintiff, Jack Irvine, has a good and valid mechanic's lien upon the interest of Angus McDougall in and to said mining claim and leasehold

interest to the extent that such interest existed upon the 3rd day of February, 1913, for the sum of Seven Hundred and Fourteen Dollars (\$714.00) with interest thereon from May 20, 1913, at eight per cent per annum; for the further sum of Two and 25-100 Dollars (\$2.25), expense of filing his said lien statement; for the further sum of One Hundred and Forty-three Dollars (\$143.00) as attorney's fees for the foreclosure of said lien and for the costs and disbursements of this suit.

2—That said Jack Irvine is entitled to a judgment against the said Angus McDougall for the above mentioned amounts and for the judgment foreclosing said mechanic's lien upon said claim and leasehold interest and ordering the proceeds of said sale applied to the payment of said judgment.

3—That the aforesaid lien of Jack Irvine is a first lien upon the said interests of said Angus McDougall and is superior to any right, title, interest, lien or claim of the defendants, J. A. Healy, Roy Rutherford and Geo. M. Smith.

4—That at the time John Wensel ceased working upon said claim, to-wit: May 12, 1913, he had no right to a mechanic's lien upon said claim by reason of having ceased work thereon for the period of thirty days.

5—That at the time James Fox, Donald Hayes, Tom King, John Sully and Henry Berks ceased work upon said claim, to-wit: May 12, 1913, they, and each of them had a right to a mechanic's lien upon

said claim and leasehold interest of Angus McDougall, for the payment of the respective amounts due them.

6—That the lien claims of James Fox, Donald Hayes, John Wensel, John Sully and Henry Berks, were and are invalid and of no effect for the reason that said men sold and assigned their said claims upon which said liens were based, to the plaintiff, Jack Irvine, upon the 20th day of May, 1915, and said men were not the owners of said claims at the time they filed said lien statements, therefore the plaintiff is not entitled to any judgment for the amount of said assigned claims.

7—That the lien claim of said Tom King, as filed upon the 28th day of May, 1913, gave rise to a good, valid and sufficient mechanic's lien upon the aforesaid interests of defendant, McDougall, but plaintiff was not the assignee and owner of said lien claim of Tom King, nor the debt secured thereby at the time of the commencement of this suit, and therefore is not entitled to any judgment thereon.

DATED at Fairbanks, Alaska, this 29th day of October, 1915.

CHARLES E. BUNNELL,
Judge.

Entered in Court Journal No. 13, page 313.

Service of a copy of the within Findings of Fact and Conclusions of Law is hereby admitted this 15th

day of October, 1915.

Attorney for Plaintiff Jack Irvine.
CECIL H. CLEGG,
Attorney for Defendant J. A. Healy.
McGOWAN and CLARK,
Attorneys for defendants Geo. M. Smith
& Roy Rutherford.

Endorsed: Filed in the District Court, Territory of Alaska, 4th Div. Oct. 15, 1915.. J. E. Clark, Clerk, by L. F. Protzman, Deputy.

[Title of Court and Cause.]

**Ruling on Objections to Findings of Fact and
Conclusions of Law.**

Now on this day, the hearing on the objections to proposed Findings of Facts and Conclusions of Law filed in the above entitled cause by plaintiff and defendants herein having been heard before the Court and submitted, the Court now finds, and

IT IS HEREBY ORDERED that plaintiff's objections as set forth in Paragraphs 1, 2 and 3 are hereby overruled, "Plaintiff's proposed Findings of Fact and Conclusions of Law" are refused.

Defendant's objections to plaintiff's findings of fact, Paragraphs 1, 2, 3, 4, 5, 7, 8, 10, 11, 13, 14, 16, 17, 19 and 20, are hereby overruled.

Defendants' sixth objection to plaintiff's tenth proposed Findings of Fact is hereby sustained as to the last word, second line, and the remainder of said

Finding.

Defendants' ninth objection to plaintiff's thirteenth proposed Finding of Fact is hereby sustained as to the last two lines of said Paragraph.

Defendants' twelfth objection to plaintiff's sixteenth proposed Finding of Fact is hereby sustained beginning with the word "and" in the third line and the balance of the paragraph.

Defendants' fifteenth objection to plaintiff's twentieth proposed Finding of Fact is hereby sustained beginning with the word "and" in the third line and the balance of the paragraph.

Defendant's eighteenth objection to plaintiff's twenty-third proposed Finding of Fact is hereby sustained with the word "and" in the third line and the balance of the paragraph.

The Court on its own motion, denies all of that portion contained in Paragraph 26 of plaintiff's proposed Findings of Fact, beginning with the word "and" in the third line to the end of the paragraph, and the same is hereby stricken.

As to defendant's objections to the proposed Conclusions of Law, Paragraphs 1, 2, 3 and 4 are hereby overruled.

CHARLES E. BUNNELL,
District Judge.

[Title of Court and Cause.]

Order Denying Plaintiff's Motion.

Now at this time, Messrs. Pratt & Pratt appearing

for and on behalf of plaintiff and Messrs. McGowan & Clark appearing for and on behalf of defendant, and plaintiff's motion for a new trial having previously been submitted to the Court for its decision, and the Court now having carefully considered the matter and being fully advised in the premises,

IT IS ORDERED that plaintiff's motion for a new trial be, and the same is, hereby denied.

CHARLES E. BUNNELL,

District Judge.

[Title of Court and Cause.]

Judgment and Decree.

WHEREAS this cause came on for trial before the Court in open session, upon the 21st day of May, 1915, upon the amended complaint of plaintiff as further amended by interlineation, the answer of defendant, J. A. Healy, the answer of the defendants Geo. M. Smith and Roy Rutherford to the amended complaint of plaintiff as further amended by interlineation. The plaintiff appeared in person and by Harry E. Pratt, one of his attorneys. The defendant J. A. Healy, appeared by Cecil H. Clegg, his attorney, the defendants Geo. M. Smith and Roy Rutherford, appeared by John A. Clark, one of their attorneys. After the introduction of all evidence and at the close of the case the Court took the same under advisement and on the 29th day of October, 1915, signed and filed his findings of fact and conclusions of law wherein he found and concluded

as follows, to-wit:

1—That the default of the defendant Angus McDougall had been duly and regularly entered and that the said defendant was indebted to the plaintiff Jack Irvine, upon the matters set forth in the first cause of action of plaintiff's amended complaint as further amended by interlineation in the sum of Seven Hundred and Fourteen Dollars with interest thereon at eight per cent per annum from May 20, 1913; in the further sum of Two Dollars and twenty-five cents and One Hundred and Forty-three Dollars, costs of filing and foreclosing the mechanic's lien in said first cause of action; for such further sums as were expended for costs in this suit.

2—That the plaintiff Jack Irvine had a good and valid mechanic's lien for the payment of the aforesaid amounts, by reason of the matters set forth in the aforesaid first cause of action, upon the interests of defendant, Angus McDougall as they existed upon the 3rd day of February, 1913, in and to that certain quartz mine in the Fairbanks Precinct, fourth judicial division, Territory of Alaska, known as the Pioneer Quartz Mining Claim and situated at the head of Fairbanks Creek on the left limit thereof, on the divide between said creek and Wolf creek, and in and to that certain lease upon said mining claim made upon the 25th day of May, 1912 by Angus McDougall, Michael Hyland, Thomas A. McGowan and John A. Clark, the owners of said claim to Angus McDougall, wherein said claim was leased to said

McDougall for mining purposes for a period of ten years from June 1st, 1912, reserving to said makers no rent for the first year of said lease but ten per cent of the gross output of said mine for the second and third years, and fifteen per cent of said gross output for the remaining term of said lease, which was recorded upon the 2nd day of September, 1912, in the office of the Recorder of the Fairbanks Precinct, Alaska, in book 5 of Leases at page 337 and numbered Instrument No. 37027.

3—That the aforesaid mechanic's lien of plaintiff, set forth in the first cause of action, was a first lien upon said interests of said McDougall in said mining claim and leasehold interest and was superior to the right, title, interest, lien or claim of the defendants Healy and Rutherford and Smith, and that plaintiff was entitled to a judgment for said amounts against said McDougall, and for an order foreclosing said lien and ordering said property sold to satisfy said judgment.

4—That the assigned claims of James Fox, Donald Hays, John Wensel, John Sully and Henry Berkes, set forth in the second, third, fourth, fifth and seventh causes of action, respectively, of plaintiff's amended complaint as further amended by interlineation, did not constitute valid liens and plaintiff was not entitled to recover anything thereon.

5—That the assigned claim of Tom King as set forth in the sixth cause of action of plaintiff's amended complaint, as further amended by interline-

ation, constituted a valid lien but that the plaintiff was not the owner thereof at the time of the commencement of this action.

NOW THEREFORE IT IS ORDERED, ADJUDGED and DECREED that the plaintiff, Jack Irvine, do, have and recover of and from the defendant Angus McDougall, the sum of Eight Hundred and Fifty-two Dollars: the further sums of Two Dollars and twenty-five cents, and One Hundred and Forty-three Dollars as filing and attorney's fees as aforesaid; and the further sum of..... Dollars, the costs of this action, to be taxed by the Clerk of this Court.

IT IS FURTHER ORDERED and DECREED that the aforementioned lien of plaintiff Jack Irvine, upon said interests of said Angus McDougall, in the said claim and leasehold interest as said interests appeared on the 3rd day of February, 1913, be and the same is hereby foreclosed, and it is ordered that the said interests in said claim and leasehold interest be sold according to law and the proceeds applied to the payment of the above sums.

IT IS FURTHER ADJUDGED and DECREED that the said lien of Jack Irvine, as designated above, and in his pleadings in this case, is a first lien upon said interests and superior and paramount to any right, title, interest, lien or claim of the defendants, Healy, Smith and Rutherford.

IT IS FURTHER ADJUDGED and DECREED that the aforesaid assigned claims of James Fox,

Donald Hays, John Wenzel, John Sully and Henry Berkes, set forth in the second, third, fourth, fifth and seventh causes of action respectively, of plaintiff's amended complaint as further amended by interlineation, did not constitute valid liens and that the plaintiff shall take nothing thereby.

IT IS FURTHER ADJUDGED and DECREED that plaintiff take nothing by virtue of the assigned claim of Tom King set forth in the sixth cause of action of plaintiff's amended complaint as further amended by interlineation.

For all of which, let execution issue as provided by law.

DATED at Fairbanks, Alaska, this 9th day of November, 1915.

CHARLES E. BUNNELL,
District Judge.

Entered in Court Journal No. 13 page 334.

Received copy Nov. 6th, 1915.

CECIL H. CLEGG,
Atty. for Deft. Healy.

McGOWAN and CLARK,

Attys. for Defts. Smith & Rutherford.

Endorsed: Filed in the District Court, Territory of Alaska, 4th Div., Nov. 9, 1915. J. E. Clark, Clerk, by Sidney Stewart, Deputy.

[Title of Court and Cause.]

Order Substituting Attorneys.

Upon the motion of Harry E. Pratt, made in

open court, it is

ORDERED that the firm name of Louis K. Pratt & Son be withdrawn from the records of this court as attorneys in the above case and the names of Harry E. Pratt and Louis K. Pratt be substituted therefor.

DATED at Fairbanks, Alaska, this 12th day of October, 1915.

CHARLES E. BUNNEL,
District Judge.

Entered in Court Journal No. 13, Page 287.

Endorsed: Filed in the District Court, Territory of Alaska, 4th Div., Oct. 12, 1915. J. E. Clark, Clerk, by Sidney Stewart, Deputy.

[Title of Court and Cause.]

Assignments of Error.

Comes now the above named plaintiff and alleges, that the findings of fact and conclusions of law and the decree entered in the above entitled case upon the 29th day of October, 1915, and the 9th day of November, 1915, respectively, are erroneous and unjust to the plaintiff, and he files with his petition on appeal, the following assignments of error upon which he will rely upon his said appeal, to-wit:

1—The Court erred in making finding of fact number twenty-eight, which was in words and figures, as follows:

“28—That the aforesaid James Fox, Donald Hayes, John Wensel, John Sully, and Henry

Berks, sold and assigned their aforesaid claims against the said defendant, Angus McDougall to the plaintiff, Jack Irvine, upon the 20th day of May, 1913 and were not the owners of their said claims at the time they filed their lien statements as above mentioned."

for the reason that said finding is contrary to the evidence adduced upon the trial of this case.

2—The Court erred in making that portion of finding of fact number twenty-nine, which was in words and figures as follows:

"29—That the aforesaid Tom King sold and assigned his said claims to the plaintiff, Jack Irvine, long after the commencement of this suit and the said Jack Irvine was not the owner and holder of said claim at the time of the commencement of this suit,"

for the reason that said portion of said finding is directly contrary to the evidence adduced at the trial of this case.

3—The Court erred in making conclusions of law number six of said conclusions of law, in words and figures as follows:

"6—That the lien claim of James Fox, Donald Hayes, John Wensel, John Sully and Henry Berks, were and are invalid, and of no effect for the reason that said men sold and assigned their said claims upon which said liens were based, to the plaintiff, Jack Irvine, upon the 20th day of May, 1915, and said men were not the owners of

said claims at the time they filed said lien statements, therefore the plaintiff is not entitled to any judgment for the amount of said assigned claims."

for the reason that said conclusion is directly contrary to the law and evidence of the case, and is not based upon any finding of fact warranted by the evidence of the case: For the further reason that said conclusion of law is contrary to the law and inconsistent with the findings of fact made by the Court in this case.

4—The Court erred in making that portion of conclusion of law, number seven, which reads as follows:

"But plaintiff was not the assignee and owner of said lien claim of Tom King nor the debts secured thereby at the time of the commencement of this suit and therefore is not entitled to any judgment thereon."

for the reason that said portion is not based upon any finding of fact which is warranted by the evidence of this case, but the same is contrary to the law and evidence in this case.

5—The Court erred in refusing to sign plaintiff's proposed findings of fact.

6—The Court erred in failing and refusing to find that the lien claims of James Fox, Donald Hayes, John Sully, Tom King and Henry Berks set forth in the second, third, fifth, sixth and seventh causes of action of plaintiff's amended complaint, as further

amended by interlineation, were good and valid mechanic's liens, and that the same had been assigned to the plaintiff after the filing of the same in the office of the Recorder of the Fairbanks Precinct, Territory of Alaska, and before the commencement of this suit.

7—The Court erred in failing and refusing to enter judgment and decree declaring the lien claims of James Fox, Donald Hayes, John Sully, Tom King and Henry Berks, set forth in the second, third, fifth, sixth and seventh causes of action respectively, good and valid liens owned by the plaintiff and ordering the same foreclosed and the property therein mentioned, sold to satisfy the sums mentioned in said causes of action.

8—The Court erred in over-ruling plaintiff's objections to findings of fact and conclusions of law, prepared consonant to the Court's decision and which said findings of fact and conclusions of law, were, by the Court, signed upon the 29th day of October, 1915.

9—The Court erred in denying plaintiff's motion for a new trial.

10—The Court erred in making that portion of its judgment and decree, which reads as follows:

"IT IS FURTHER ADJUDGED and DECREED that the aforesaid assigned claims of James Fox, Donald Hayes, John Wensel, John Sully and Henry Berks, set forth in the second, third, fourth, fifth and seventh causes of action

respectively, of plaintiff's amended complaint as further amended by interlineation, did not constitute valid liens and that plaintiff shall take nothing thereby."

for the reason that portion is contrary to the law and evidence in this case and not based upon any finding of fact and conclusion of law warranted by the evidence in this case.

11—The Court erred in making that portion of its judgment and decree which reads, as follows:

"IT IS FURTHER ADJUDGED and DECREED that plaintiff take nothing by virtue of the assigned claim of Tom King set forth in the sixth cause of action of plaintiff's amended complaint as further amended by interlineation."

for the reason that said portion is contrary to the law and evidence in this case and not based upon any finding of fact and conclusion of law justified by any law and evidence in this case.

12—The Court erred in failing and refusing to find that the lien claims of said James Fox, Donald Hayes, John Sully, Tom King and Henry Berks were valid first liens upon said property and superior to any right, title or lien of defendants J. A. Healy, Geo. M. Smith and Roy Rutherford and in refusing to so decree.

13—The Court erred in making and signing the judgment and decree entered herein.

WHEREFORE plaintiff prays that the judgment in the above entitled action be reversed and that the

Court be ordered to make findings of fact and conclusions of law in accordance with the law and the evidence of the case, and to base a decree thereon.

HARRY E. PRATT,

LOUIS K. PRATT,

Attorneys for plaintiff.

Due service of the foregoing assignments of error is hereby admitted this 17th day of November, 1915.

CECIL H. CLEGG,

Attorney for defendant, J. A. Healy.

McGOWAN and CLARK,

Attys. for Defs. Smith & Rutherford.

Endorsed: Filed in the District Court, Territory of Alaska, 4th Div., Nov. 17, 1915. J. E. Clark, Clerk, by Sidney Stewart, Deputy.

[Title of Court and Cause.]

Petition for Allowance of Appeal.

To the Honorable CHARLES E. BUNNELL, DISTRICT JUDGE:

The above named plaintiff, Jack Irvine, feeling that he is aggrieved by the decree made and entered in this case on the 9th day of November, 1915, does hereby appeal from said decree to the Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the assignment of errors which is filed herewith, and he prays that his appeal be allowed, and that citation issue as provided by law, directing that said appeal be heard at San Francisco, Califor-

nia, fixing the amount of the appeal bond, and that a transcript of the record, proceedings and papers upon which said decree was based, duly authenticated, be sent to the said United States Circuit Court of Appeals setting at San Francisco, California.

Dated at Fairbanks, Alaska, this 17th day of November, 1915.

HARRY E. PRATT,
LOUIS K. PRATT,
Attorneys for Plaintiff.

Service of the foregoing Petition for Allowance of Appeal is hereby admitted at Fairbanks, Alaska, this 17th day of November, 1915.

CECIL H. CLEGG,
Atty. for defendant J. A. Healy.
McGOWAN and CLARK,

Attys. for defendants Smith & Rutherford.

Endorsed: Filed in the District Court, Territory of Alaska, 4th Div., Nov. 17, 1915. J. E. Clark, Clerk, by Sidney Stewart, Deputy.

[Title of Court and Cause.]

**Order Allowing Appeal, Fixing Place of Hearing and
Fixing Amount of Appeal Bond.**

Now upon this 17th day of November, the same being one of the regular term days of this Court, this matter came on to be heard upon the petition of the plaintiff, Jack Irvine, for an appeal and fixing the place of hearing and the amount of the appeal bond and the Court, being advised in the premises;

IT IS ORDERED That said Jack Irvine's appeal in said matter to the United States Circuit Court of Appeals for the Ninth Circuit, be, and the same is hereby allowed, and that a certified transcript of the record, proceedings, orders, decree, testimony, and all other proceedings in said matter upon which said decree appealed from is based, duly authenticated, be transferred to the United States Circuit Court of Appeals for the Ninth Circuit.

IT IS FURTHER ORDERED that said appeal be heard at San Francisco, California, and that the bond of Jack Irvine upon said appeal be fixed at the sum of Two hundred fifty dollars, to cover all costs and damages, if the appellant fail to make his plea good.

DATED at Fairbanks, Alaska, this 17th day of November, 1915.

CHARLES E. BUNNELL,
District Judge.

Entered in Court Journal No. 13, page 360.

Service of the foregoing order allowing appeal and fixing place of hearing and fixing appeal bond by receipt of a true copy thereof, admitted this 17th day of November, 1915.

CECIL H. CLEGG,
Atty. for Defendant J. A. Healey.
McGOWAN and CLARK,

Attys. for Defendants Smith & Rutherford.

Endorsed: Filed in the District Court, Territory of Alaska, 4th Div., Nov. 17, 1915. J. E. Clark, Clerk, by Sidney Stewart, Deputy.

[Title of Court and Cause.]

Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS: that we, Jack Irvine, plaintiff and appellant, as principal, and N. A. Shaw, as surety, are held and firmly bound unto Angus McDougall, J. A. Healy, Geo. M. Smith, and Roy Rutherford, defendants and appellees, in the sum of Two Hundred and Fifty Dollars (\$250.00), to be paid to the said Angus McDougall, J. A. Healy, Geo. M. Smith and Roy Rutherford, defendants and appellees, their executors, administrators, heirs and assigns, to which payment well and truly to be made, we bind ourselves, and each of us, jointly and severally, our executors, administrators, heirs and assigns, firmly by these presents.

Sealed with our seals and dated this 17th day of November, 1915.

WHEREAS the above named plaintiff, Jack Irvine, has taken an appeal to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the judgment rendered upon the 9th day of November, 1915, in the above entitled action, by the District Court of the United States, for the Territory of Alaska, Fourth Judicial Division.

THEREFORE, the condition of this obligation is such, that if the above named plaintiff shall prosecute said appeal to effect and answer all costs and damages if he fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and effect.

JACK IRVINE,

Principal.

By HARRY E. PRATT,

His Attorney.

N. A. SHAW,

Surety.

United States of America,
Territory of Alaska,—ss:

N. A. SHAW, being first duly sworn on oath says: I am a resident of the Fairbanks Precinct, Territory of Alaska, and am the surety on the foregoing bond; and am worth the sum of Five Hundred Dollars, over and above all my just debts and liabilities in property not exempt from execution and situated within the Territory of Alaska.

N. A. SHAW.

Subscribed and sworn to before me this 17th day of November, 1915.

(Seal)

HARRY E. PRATT,

Notary Public in and for Alaska.

My commission expires June 24, 1916.

The foregoing bond and the sufficiency of the sureties thereon is hereby approved this 17th day of November, 1915.

CHARLES E. BUNNELL,

District Judge.

Endorsed: Filed in the District Court, Territory of Alaska, 4th Div., Nov. 17, 1915. J. E. Clark, Clerk, by Sidney Stewart, Deputy.

Citation.

United States of America,
Territory of Alaska,
Fourth Judicial Division,—ss:

THE PRESIDENT OF THE UNITED STATES, to
Angus McDougall; J. A. Healy and his attorney,
Cecil H. Clegg; Geo. M. Smith; and Roy Rutherford,
and their attorneys, McGowan & Clark.
GREETING:

YOU ARE HEREBY CITED to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit to be holden in the city of San Francisco, State of California, within thirty days from the date of this writ, pursuant to an order allowing an appeal entered and made in that certain case in the District Court, for the Territory of Alaska, Fourth Judicial Division, wherein Jack Irvine is plaintiff and appellant, and Angus McDougall, J. A. Healy, Geo. M. Smith and Roy Rutherford, are defendants and appellees, and numbered therein No. 1938, to show cause, if any there be, why the decree rendered against said plaintiff and appellant on the 9th day of November, 1915, as mentioned in said order allowing said appeal, should not be corrected, set aside and reversed, and why speedy justice should not be done to the plaintiff, appellant, Jack Irvine, in that behalf.

WITNESS the Honorable Edward Douglass White,
Chief Justice of the Supreme Court of the United

States, this 17th day of November, 1915.

CHARLES E. BUNNELL,
District Judge.

Service of the above and foregoing Citation by receipt of a copy thereof, is hereby admitted this 17th day of November, 1915.

CECIL H. CLEGG,
Atty. for Defendant J. A. Healy.
McGOWAN and CLARK,
Attys. for Defs. Smith & Rutherford.

Endorsed: Filed in the District Court, Territory of Alaska, 4th Div., Nov. 17, 1915. J. E. Clark, Clerk.

[Title of Court and Cause.]

Order Enlarging Time to Docket Case.

Upon suggestion of plaintiff's attorneys that, by reason of the great distance between Fairbanks, Alaska, and San Francisco, California, and the uncertainty of mail service between these points, it would be impossible for the Clerk of this Court to forward the record in this case and deliver it to the Clerk of the Circuit Court of Appeals for the Ninth Circuit in San Francisco, within thirty days.

IT IS THEREFORE ORDERED that the time in which the record in this case shall be deposited with the said Clerk of the Circuit Court of Appeals for the Ninth Circuit in the city of San Francisco, state of California, be, and the same is hereby ex-

tended and enlarged to the 31st day of January, 1916.

CHARLES E. BUNNELL,

Judge of the District Court.

Entered in Court Journal No. 13, page 367.

Service of the foregoing Order by receipt of copy thereof admittd this 17th day of November, 1915.

CECIL H. CLEGG,

Atty. for Defendant J. A. Healy.

McGOWAN and CLARK,

Attys. for Defs. Smith & Rutherford.

Endorsed: Filed in the District Court, Territory of Alaska, 4th Div., Nov. 17, 1915. J. E. Clark, Clerk.

United States of America,

Territory of Alaska,

Fourth Division,—ss:

I, J. E. CLARK, Clerk of the District Court, Territory of Alaska, Fourth Division, do hereby certify that the foregoing, consisting of ninety-two pages, numbered 1 to 92, inclusive, constitutes a full, true and correct transcript of the record on Appeal in cause No. 1938, entitled, Jack Irvine, Plaintiff and Appellant, vs. Angus McDougall, Thos. A. McGowan, John A. Clark, Dave Cascaden, J. A. Healey, Geo. M. Smith, John Kopitz and Roy Rutherford, Defendants and Appellees, and was made pursuant to and in accordance with the praecipe of the plaintiff and Appellant, filed in this action and made a part of this transcript, and by virtue of the Citation issued in said cause and is the return thereon in accordance

therewith.

And I do further certify that the Index thereof, consisting of page numbered i, is a correct Index of said Transcript of record; also that the costs of preparing said transcript and this certificate, amounting to Thirty-three and 95-100 Dollars (\$33.95), has been paid to me by counsel for plaintiff and Appellant in said action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said court, this 20th day of November, A. D. 1915.

(Seal)

J. E. CLARK,
Clerk of the District Court, Territory of Alaska,
Fourth Division.

